

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
BRIEF**

75-7058

United States Court of Appeals

SECOND CIRCUIT

MORGAN ASSOCIATES, a Joint Venture of TERMINAL CONSTRUCTION CORPORATION, THE DIC CONCRETE CORPORATION, UNDERHILL CONSTRUCTION CORP. and NAGER ELECTRIC COMPANY, INC.,

Plaintiff-Appellant,

—v.—

UNITED STATES POSTAL SERVICE, ELMER T. KLASSEN, POSTMASTER GENERAL, JAMES J. WILSON, Assistant General Counsel, UNITED STATES POSTAL SERVICE, CONTRACTS AND PROPERTY DIVISION,

Defendants-Appellees.

NAB-LORD ASSOCIATES, a Joint Venture of NAB CONSTRUCTION CORP. and LORD ELECTRIC CO., INC.,

Intervenor-Appellee.

RECORD ON APPEAL

M. CARL LEVINE, MORGULAS & FOREMAN
Attorneys for Appellants
747 Third Avenue
New York, N. Y. 10017

PAUL J. CURRAN
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866 Third Avenue
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p/s

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MORGAN ASSOCIATES, a Joint Venture of
TERMINAL CONSTRUCTION CORPORATION,
THE DIC CONCRETE CORPORATION,
UNDERHILL CONSTRUCTION CORP. and
NAGER ELECTRIC COMPANY, INC.,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,
ELMER T. KLASSEN, POSTMASTER GENERAL,
JAMES J. WILSON, Assistant General Counsel,
UNITED STATES POSTAL SERVICE,
CONTRACTS AND PROPERTY DIVISION,

Defendants,

NAB-LORD ASSOCIATES, a Joint Venture of
NAB CONSTRUCTION CORP. and
LORD ELECTRIC CO., INC.,

Intervenor.

JUDGE POLLACK

Civil Action
: File No.
75 CIV. 117

: NOTICE OF
APPEAL

----- x

S I R S :

PLEASE TAKE NOTICE that the plaintiff, MORGAN ASSOCIATES, hereby appeals to the Circuit Court of Appeals, Second Circuit, from the Orders of the District Court, Southern District of New York, entered in the office of the Clerk of the Southern District of New York, on the 20th day of January 1975, wherein and whereby the plaintiff's complaint was dismissed and its motion for injunctive and other relief denied, and hereby

- 1 -

FILE
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FILED
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appeals from each and every part of said Orders, as well as the whole thereof.

Dated: New York, N. Y.

January 22, 1975

Yours etc.,

M. CARL LEVINE, MORGULAS & FOREMAN

By: _____
A Member of the Firm

Attorneys for Plaintiff,
MORGAN ASSOCIATES, a Joint
Venture, etc.,
Office and Post Office Address
747 Third Avenue
New York, N. Y. 10017
(212) #759-1720

TO: Clerk of the United States
District Court
Southern District of New York
United States Courthouse
Foley Square
New York, N. Y.

PAUL J. CURRAN,
United States Attorney for
the Southern District of New York,
Attorney for Defendants,
By: PATRICK H. BARTH,
Assistant United States Attorney

MCDONOUGH, SCHNEIDER, MARCUS,
COHN & TRETTER,
Attorneys for Intervenor,
866 Third Avenue
New York, N. Y. 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MORGAN ASSOCIATES, a Joint Venture of
TERMINAL CONSTRUCTION CORPORATION, THE
DIC CONCRETE CORPORATION, UNDERHILL
CONSTRUCTION CORP. and NAGER ELECTRIC
COMPANY, INC.,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE, ELMER T.
KLASSEN, POSTMASTER GENERAL, JAMES J.
WILSON, Assistant General Counsel,
UNITED STATES POSTAL SERVICE, CONTRACTS
AND PROPERTY DIVISION,

Defendants,

NAB-LORD ASSOCIATES, A Joint Venture of
NAB CONSTRUCTION CORP. and LORD
ELECTRIC CO., INC.,

Intervenor.

JAN 16 2 24 PM '75

75 CIV. 117(MP)

#41761

D E C I S I O N

APPEARANCES:

M. CARL LEVINE, MORGULAS & FOREMAN
Attorneys for Plaintiff
747 Third Avenue, New York, N.Y. 10017
By: Allen Ross, Esq. and Jerrold Morgulas, Esq.

PAUL J. CURRAN, United States Attorney
for the Southern District of New York
By: Patrick H. Barth, Esq.
Assistant United States Attorney

MCDONALD, SCHNEIDER, MARCUS, COHN & TRETTER
Attorneys for Intervenor
866 Third Avenue, New York, N.Y. 10022
By: Eli S. Cohn, Esq. and
Franklin E. Tretter, Esq.

MILTON POLLACK, District Judge.

MILTON POLLACK, District Judge.

Morgan Associates, a joint venture seeking a construction contract on competitive bidding, seeks injunctive relief against the awarding of a contract by defendants United States Postal Service ("Service" hereafter) and its agents to another joint venture, Nab-Lord Associates, which was the apparent low bidder. At the threshold, the Service challenges the plaintiff's standing to bring this suit. For the reasons shown hereafter the suit must be dismissed.

The defendant Service by an Invitation issued on or about August 26, 1974, entitled "Invitation No. R.E.B. 74-8" invited public bids for certain construction work in connection with the reconstruction of the United States Post Office, Morgan Station, located in New York City. The project consisted of alterations and reconstruction of the existing Post Office Building which was damaged by a fire in 1967 and the construction and installation of mail handling equipment. The Service estimated that the work would cost between \$35-million and \$55-million.

Bids were opened on November 21, 1974. Nab-Lord Associates bid \$51,480,000. and plaintiff bid \$54,444,000. A third bid from Fischbach & Moore, Inc. was in the amount of \$62,000,000. Under the Invitation bids must be accepted by January 21, 1975. However, all bidders have extended this period for acceptance until February 20, 1975. After that date, bidders are no longer bound by their offers.

On December 2, 1974 the plaintiff filed a protest with the Contracting Officer of the Service requesting that the bid of Nab-Lord be rejected and the award be made to Morgan Associates as the next lowest bidder. The essence of the protest was that Nab-Lord was privy to knowledge unavailable to other bidders in violation of principles of open and competitive bidding. The background of this was that a former Postal Service employee, Mr. Paul Hendrickson, now the president of Rohr-Plessy, a subcontracting firm, was also now associated with Nab-Lord, and that other Postal Service employees, who had been associated with S. W. Brown Associates, the contractor which made the mechanization design drawings for the Morgan Station project, were now connected to Nab-Lord

The determination of the Service on the protest was that "there has been no violation of Postal Service policy" in respect to the bidders. It sustained the Contracting Officer's conclusion that the bid of Nab-Lord is responsive and that the award could not be made to protestant. The protest was denied.

This injunction suit followed.

As a threshold objection to injunctive relief, the Postal Service asserts that Morgan Associates lacks standing to question before this Court the contractual action taken or about to be taken by the Service.^{2/}

^{1/} The Postal Service regulations permit an unsuccessful bidder to protest to the Service's General Counsel, but apparently do not provide for further administrative or judicial review of bid determinations. See Postal Contracting Manual, 2-407.8, incorporated by reference in 39 C.F.R. §§601.100 and 601.103(b).

^{2/} It is important to distinguish the question of standing, i.e., whether a particular person is a proper party to seek judicial review, from the question of whether the administrative action is reviewable at all by the courts. See L. Jaffee, Judicial Control of Administrative Action, 336 (1965). Professor Jaffee does note that if the class of persons most nearly affected does not have standing, the administrative action is for all practical purposes not subject to judicial review. Id. at 337.

The rule in this circuit is that an unsuccessful bidder lacks standing to bring suit to challenge the equality of the bidding procedure. Edelman v. Federal Housing Administration, 382 F.2d 594, 597 (2d Cir. 1967) (Moore, J.) (citing Perkins v. Lukens Steel Co., 310 U.S. 113 (1940)). "Bidding procedures are for the benefit of the public generally and confer no private rights on the bidder." Id.

Edelman in essence involved the sale of real property by the FHA to the principal of the managing agent for the property and a challenge by the second highest bidder. The Court held that the unsuccessful bidder was barred from litigating its claim that the successful principal's bid was void on the ground that he possessed superior information concerning the property and had blocked the unsuccessful bidder's free access to the property.^{3/}

^{3/} The plaintiff in Edelman also attempted to assert a claim under the Tort Claims Act, but the Court concluded that such a claim would be barred by the statutory exclusion of causes of action for "misrepresentation, deceit, or interference with contract rights." 28 U.S.C. §2680(h). Morgan Associates does not appear to assert a cause of action in tort.

Morgan Associates contends that it is nonetheless a proper party as a private attorney general to assert the public interest in truly competitive bidding on construction contracts, citing Scanwell Laboratories, Inc. v. Shaffer, 424 F.2d 859 (D.C. Cir. 1970) (unsuccessful bidder has standing to assert the disqualification of the successful bidder under the applicable regulations).

However, even if the private attorney general rationale represented the law of this Circuit with respect to contract bid challenges, it would not be applicable to the Postal Service action in this case. The relaxed view taken in Scanwell of those "aggrieved persons" who had standing was based upon an interpretation of the congressional intent expressed both in the specific statute granting the right to review when the Walsh-Healy Act is involved, 41 U.S.C. §43a, and in Section 10 of the Administrative Procedure Act, 5 U.S.C. §702.

The Postal Reorganization Act of 1970 (the "Act"), which replaced the Post Office Department with the

United States Postal Service, grants judicial review of limited matters^{4/} but does not include a grant of judicial review of contract bids, and the Act explicitly excludes the Administrative Procedure Act ("APA") from applicability to the exercise by the Service of its powers with respect to "public or Federal Contracts, property [or] works".^{5/} 39 U.S.C. §410(a). Additionally, general statutory requirements on governmental agency contracting are expressly made inapplicable to the contracting by the Service (with exceptions not relevant here). 39 U.S.C. §410(a).

^{4/} "Aggrieved persons" are granted judicial review, for example, of postal ratemaking determinations. 39 U.S.C. §3628.

^{5/} Citation by Morgan Associates of cases reviewing Postal Service mail stop orders or interception orders made upon a finding of false advertising, e.g., N. Van Dyne Advertising Agency, Inc. v. United States Postal Service, 371 F. Supp. 1373 (S.D.N.Y. 1974); American Image Corporation v. United States Postal Service, 370 F. Supp. 964 (S.D.N.Y. 1974), is inapposite for two reasons. First, §410(a) of the Act does not affect the applicability of the APA beyond the areas explicitly listed. Second, addressees of stop or interception orders would be found to have standing under even the most restrictive interpretation of the doctrine.

The exclusion of the APA from applicability to contracting by the Service has its counterpart in the superseded provisions of Title 39 and expresses congressional recognition that a rapid and major reorganization and modernization of both facilities and personnel of the Post Office would be necessary if the burgeoning demands for service were to be met. See H.R. Rep. No. 91-1104, 91st Cong., 2d Sess., 1970 U.S. Code Cong. & Admin. News, 3649, 3650-53. Thus it may be said that the interest of Morgan Associates as an unsuccessful bidder has been excluded from and is not "arguably within the zone of interests to be protected". See Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 153 (1970).

The congressional determination to consider the interests of unsuccessful bidders only through administrative^{6/} action rather than judicial scrutiny is appropriate

^{6/} See note 1, supra.

if modernization of the Postal Service is to proceed expeditiously.^{7/} See Gary Aircraft Corp. v. United States, 342 F. Supp. 473, 477-78 (W.D. Tex. 1972).

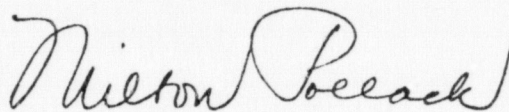
The exclusions mentioned above affect the questions both of standing, 5 U.S.C. §702, and the availability of review vel non, 5 U.S.C. §701, under the APA.

^{7/} "Courts should not, where Congress has not done so, subject purchasing agencies of Government to the delays necessarily incident to judicial scrutiny at the instance of potential sellers.... A like restraint applied to purchasing by private business would be widely condemned as an intolerable business handicap." Perkins v. Lukens Steel Co., 310 U.S. 113, 130 (1940).

"Top management must be given authority, consistent with its responsibilities, to provide an efficient and economical postal system. Postal management has been severely and unjustly hampered in its efforts to administer the Department in a businesslike way." H.R. Rep. No. 1104, supra at 3653.

Accordingly, the Court concludes that Edelman governs, and that Morgan Associates lacks standing to bring this suit. Complaint dismissed.

SO ORDERED.



January 20, 1975

Milton Pollack
U.S. District Judge

PMB:ew
75-0013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MORGAN ASSOCIATES, a Joint :
Venture of TERMINAL CONSTRUCTION
CORPORATION, et al., :

Plaintiff, :

-against- :

UNITED STATES POSTAL SERVICE,
et al., :

Defendant. :

MOTION TO DISMISS
THE COMPLAINT

75 Civ. 117 (MP)

-----X
S I R S :

PLEASE TAKE NOTICE, that upon all pleadings and
proceedings heretofore had herein, the undersigned will
move this Court, in Room 906, United States Courthouse,
Foley Square, New York, New York, on the ^{17*}31st day of MP
January, 1975, or as soon thereafter as counsel can be
heard, for an Order dismissing the Complaint, pursuant
to Rule 12(b)(1) and (6) of the Federal Rules of Civil
Procedure.

Dated: New York, New York

January 17, 1975

Yours, etc.,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the Defendants

By: /s/

PATRICK H. BARTH
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse
Foley Square
New York, New York 10007
Telephone: (212) 791-1975

PHB:aw
75-0113

TO:

M. CARL LEVINE, MORGULAS & FOREMAN
Attorneys for Plaintiff
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Telephone: (212) 759-1720

FILED
JAN 20 1975

copy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MORGAN ASSOCIATES, a Joint Venture of
TERMINAL CONSTRUCTION CORPORATION,
THE DIC CONCRETE CORPORATION,
UNDERHILL CONSTRUCTION CORP. and
NAGER ELECTRIC COMPANY, INC.,

JUDGE POLLACK

: Civil Action
File No.
75 CIV. 117

Plaintiff,

v.

ORDER

TO SHOW

UNITED STATES POSTAL SERVICE,
ELMER T. KLASSEN, POSTMASTER GENERAL,
JAMES J. WILSON, Assistant General Counsel,
UNITED STATES POSTAL SERVICE,
CONTRACTS AND PROPERTY DIVISION,

: CAUSE

Defendants.

Upon the summons and complaint herein, upon the
affidavit of ANTHONY M. DINALLO, sworn to the 13th day of
January 1975 with Exhibits annexed thereto, the affidavit of
WILLIAM J.S. SEIGH, sworn to the 10th day of December 1974,
and upon all the proceedings had herein, it is

ORDERED, that the defendants show cause before this
Court, at Room 906, United States Court House, Foley Square,
New York, N. Y., on the 17th day of January 1975, at 2:30
o'clock in the ~~after~~ noon, or as soon thereafter as counsel
may be heard, why this Court should not issue

(1) an order pursuant to Rule 65 of the Federal
Rules of Civil Procedure, restraining the defendant,
UNITED STATES POSTAL SERVICE, and the defendant,
POSTMASTER GENERAL ELMER T. KLASSEN, their agents,

representatives and employees, from awarding, or if previously awarded, from entering into a contract with NAB-LORD ASSOCIATES, a Joint Venture, for the contract described in Invitation No. R.E.B. 74-8, during the pendency of the trial of the within action, upon the ground that the bid submitted by the said NAB-LORD ASSOCIATES in response to Invitation No. R.E.B. 74-8, was submitted in violation of appropriate contracting regulations, applicable rules, regulations and statutes, all as more particularly set forth in the affidavits attached hereto and in the complaint, and

(2) an order pursuant to Rule 65 of the Federal Rules of Civil Procedure, directing the defendants, UNITED STATES POSTAL SERVICE and ELMER T. KLASSEN, to award the contract referred to in Invitation No. R.E.B. 74-8 to plaintiff, or if said contract has been awarded to NAB-LORD ASSOCIATES, to vacate said award, upon the ground that the bid submitted by the plaintiff is the lowest responsible bid under the applicable contracting regulations, or in the alternative, for an order pursuant to Rule 65 of the Federal Rules of Civil Procedure, directing the defendants, UNITED STATES POSTAL SERVICE and ELMER T. KLASSEN, to reject all bids submitted pursuant to Invitation No. R.E.B. 74-8, and to re-advertise for new bids for the contract referred to in Invitation No. R.E.B. 74-8 and

(3) and order pursuant to Rule 30 of the Federal Rules of Civil Procedure, granting the plaintiff the right to take the testimony of the following persons, or parties, prior to the commencement of the hearing of the applications for preliminary injunctive relief referred to above, by deposition upon oral examination,

- a) UNITED STATES POSTAL SERVICE,
- b) NAB-LORD ASSOCIATES,
- c) ROHR-PLESSEY CORPORATION,
- d) PAUL HENDRICKSON,
- e) OLLIE E. KNIGHT,
- f) THOMAS CARGILL, and
- g) S. W. BROWN & ASSOCIATES,

concerning certain matters referred to in the affidavit of ANTHONY M. DINALLO, sworn to the 13th day of January 1975 and annexed hereto, upon the ground that said depositions are necessary in order to permit the plaintiff to prepare for the hearing of the applications for preliminary injunctive relief referred to above, and it is further

~~ORDERED, that pending the hearing and determination of the said applications for injunctive relief, the defendants be and the same hereby are stayed from awarding the contract referred to in Invitation No. R.E.B. 74-8 to NAB-LORD ASSOCIATES, a Joint Venture, or, if said contract has been awarded, the said defendants be and hereby are stayed from formally executing and proceeding with the performance of the contract referred to in Invitation No.~~

~~R.E.B. 74-3, and it is further~~

ORDERED, that service of this Order To Show Cause, together with the papers attached hereto, be deemed sufficient service if made upon counsel for the defendants on or before 12 o'clock on the ~~fore~~ noon of the 14th day of January 1975.

Dated: New York, New York

January 13, 1975

S/ MILTON POLLACK
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
MORGAN ASSOCIATES, a Joint Venture of
TERMINAL CONSTRUCTION CORPORATION,
THE DIC CONCRETE CORPORATION,
UNDERHILL CONSTRUCTION CORP. and
NAGER ELECTRIC COMPANY, INC.,

JUDGE POLLACK

Civil Action
: File No.
75 CIV. 117

Plaintiff,

v.

: AFFIDAVIT IN
SUPPORT OF
ORDER TO
SHOW CAUSE

UNITED STATES POSTAL SERVICE,
ELMER T. KLASSEN, POSTMASTER GENERAL,
JAMES J. WILSON, Assistant General Counsel,
UNITED STATES POSTAL SERVICE,
CONTRACTS AND PROPERTY DIVISION,

Defendants.
----- x

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

ANTHONY M. DINALLO, being duly sworn, deposes and
says:

That I am the President of TERMINAL CONSTRUCTION CORPORATION, the Managing Joint Venturer of MORGAN ASSOCIATES, a Joint Venture, the plaintiff herein. The Joint Venture consists of TERMINAL CONSTRUCTION CORPORATION, a New Jersey corporation, THE DIC CONCRETE CORPORATION, a New York corporation, UNDERHILL CONSTRUCTION CORP., a New York corporation, and NAGER ELECTRIC COMPANY, INC., a New York corporation. The principal office of the plaintiff is located at TERMINAL CONSTRUCTION CORPORATION, State Highway #17, Wood-Ridge, New Jersey. A copy of the complaint (which was filed January 10, 1975) is attached hereto as Exhibit "A".

I am personally familiar with many of the facts which will be hereafter referred to in plaintiff's application.

To the extent that I am not personally familiar with the facts that have prompted the within action and the present application, I have relied on the affidavit of WILLIAM J.S. SEIGH, sworn to the 10th day of December 1974, the original of which is attached hereto as Exhibit "B", and to which I will hereafter refer the Court.

NATURE OF THE ACTION AND
BASIS OF JURISDICTION:

This is an action by the plaintiff, MORGAN ASSOCIATES a Joint Venture, consisting of four construction companies. The Joint Venture was an unsuccessful bidder in response to an Invitation To Bid issued by the UNITED STATES POSTAL SERVICE, known as Invitation R.E.B. 74-8, for certain general reconstruction and mechanization work at the MORGAN STATION POST OFFICE, located in the City, County and State of New York.

The plaintiff brings this action to restrain the defendant, the UNITED STATES POSTAL SERVICE and its responsible employees, from awarding the contract subject of the Invitation, to the apparent low bidder, NAB-LORD ASSOCIATES.

Jurisdiction of this Court is invoked pursuant to 39 U.S.C. §409(a) granting to the District Courts original jurisdiction over actions brought against the POSTAL SERVICE.

and 5 U.S.C. §701 et seq., which gives the District Courts jurisdiction to review arbitrary, illegal and capricious action by United States Government Agencies (The Administrative Procedure Act).

Venue is laid in the Southern District of New York pursuant to 28 U.S.C. §1391 (e)(3) which provides that civil actions against agencies or officers or employees of the United States may be brought in any judicial district in which any real property involved in the action is situated.

The present application is for a temporary restraining order pending the hearing for a temporary injunction (Rule 65 FRCP), an order permitting the taking of depositions prior to the hearing of the application for a temporary injunction (Rule 30 FRCP) and for a temporary injunction pending a full trial on the merits of the action (Rule 65 FRCP).

CHRONOLOGY OF EVENTS PRIOR TO
THE BID PROTEST:

Those facts can be divided into three main areas:

- 1) The chronology of events preceding the
bid protest;
- 2) The issues surrounding the protest; and
- 3) The events after the protest which led
up to the institution of the litigation.

Before proceeding to the issues which are before the Court, there are certain facts which must be called to

the Court's attention in order that present application be placed in proper prospective.

The defendant, UNITED STATES POSTAL SERVICE, by an Invitation issued on or about August 26, 197' entitled "Invitation No. R.E.B. 74-8", invited public bids for certain construction work in connection with the reconstruction of the UNITED STATES POST OFFICE, MORGAN STATION, located in New York County, in the City and State of New York. (Upon the hearing of the application for the injunctive and other relief requested by the plaintiff, there will be handed to the Court a complete copy of the Invitation For Bid and the other applicable proposed contract documents which formed a part of the Invitation.)

The description of work contained in the Invitation, and the contract plans and specifications, is lengthy. Concisely stated, however, the project consists of alterations to and reconstruction of the existing MORGAN STATION POST OFFICE Building, which was damaged by a fire in 1967. Also included in the work is the construction and installation of mail handling equipment. The UNITED STATES POSTAL SERVICE estimated that the work would cost between Thirty-Five Million and Fifty-Five Million Dollars.

The plaintiff Joint Venture is a venture of a general construction contractor (TERMINAL), two concrete specialty subcontractors (DIC and UNDERHILL) and an electrical contractor (NAGER). The Venture was formed for the purpose of bidding for the contract referred to in the Invitation For

Bids and the derivation of the Joint Venture's name is self-explanatory.

In connection with the preparation of the Joint Venture's bid, as is customary in the construction industry, employees of the Joint Venture assembled and priced bills of material and labor and "take-offs" of the different items of labor and materials that would be required to be furnished by the successful bidder in the carrying out of the work called for by the Contract Documents.

As part of the assembling of the Joint Venture's bid, the Joint Venture requested from ROHR-PLESSEY CORPORATION, upon information and belief, a New York corporation, (hereinafter referred to as "ROHR"), a price or bid for the supply and installation by ROHR of certain mail handling and associated mechanization equipment which was part of the work.

Despite several requests to ROHR for mechanization equipment bids, we were totally ignored by ROHR and, in fact, were never furnished by ROHR with a bid.

The Joint Venture bid was submitted to the UNITED STATES POSTAL SERVICE on November 21, 1974 and was prepared without the benefit of a price for the mechanization work referred to from ROHR.

On November 21, 1974, the UNITED STATES POSTAL SERVICE opened all of the bids which were submitted in response to the Invitation and at the opening the following were the bids:

1. NAB-LORD ASSOCIATES
(a Joint Venture) \$51,480,000.00
2. Plaintiff,
MORGAN ASSOCIATES
(a Joint Venture) 54,444,000.00
3. Fishbach And Moore,
Incorporated 62,000,000.00

Shortly after the bid opening, we were contacted by WILLIAM J.S. SEIGH, who is and was at the time, a Sales Engineer employed by the JERVIS B. WEBB COMPANY (hereinafter referred to as "WEBB"), whose office is located at 9000 Alpine Avenue, Detroit, Michigan. The WEBB Company is engaged in the business of manufacturing and installing essentially the same type of mechanization equipment manufactured and sold by ROHR.

Mr. SEIGH stated to us that he believed that there

were certain facts, in connection with the bid that was submitted by the apparent low bidder, NAB-LORD ASSOCIATES, of which he did not think the Joint Venture was aware. He further stated that as the apparent second low bidder, the Joint Venture was in a position to challenge the entire bidding arrangement and he suggested a prompt meeting in order to acquaint our employees with this information.

The facts related by Mr. SEIGH to our employees are simply fantastic. I should point out at this time that these material facts were not known to us prior to the bidding.

There is no cause for me to repeat in detail those facts at this juncture because Mr. SEIGH provided the Joint Venture with an affidavit, sworn to the 10th day of December 1974, the original of which is annexed hereto as Exhibit "B".

In summary, SEIGH alleges that certain persons previously employed by the UNITED STATES POSTAL SERVICE, or its predecessor, prior to 1970, gained information about the proposed reconstruction of the MORGAN STATION POST OFFICE, which would give those persons a distinct advantage in evaluating the construction and mechanization work and in obtaining the design contract for this work over anyone who did not have this information. A clear violation of the intent of competitive bidding rules and regulations.

In fact, apparently, after leaving the Postal Service, these same persons held themselves out as experts in management consultant and design work related specifically

to Postal Service contracts of the type here involved.

To make matters worse, apparently, some of these same individuals, after leaving the Postal Service, and while operating as independent consultants, were, themselves, hired by the designers employed by the Postal Service for the purpose of developing the final construction requirements and drawings and specifications for the reconstruction of the MORGAN FACILITY, relative to the mechanization work.

These persons, who had worked with PAUL HENDRICKSON, at the time he was Director of Operations, Department of Research and Engineering for the Postal Service (1966-1970), and thereafter became associated with him as employees in his management concern, ultimately became employed by ROHR. HENDRICKSON, in fact, became ROHR'S President. ROHR, through its association with HENDRICKSON and the other individuals referred to in the SEIGH affidavit, was therefore, privy to design information, the seeds of which had, apparently, been planted during HENDRICKSON'S employment by the POSTAL SERVICE and nurtured thereafter until finally developed, when HENDRICKSON and/or his Group were employed by the POSTAL SERVICE'S design contractor, S.W. BROWN & ASSOCIATES.

I feel it is unnecessary to detail to the Court the advantages that were, created by the fact that HENDRICKSON and the other named individuals, were privy to this relevant and material information. The SEIGH affidavit contains several examples of the effect that the information would offer to a prospective bidder and it

would be duplicative of me to simply repeat those allegations. On the hearing to be had in connection with this application, direct and demonstrative evidence will be produced to substantiate SEIGH'S allegations.

In short, it is apparent that HENDRICKSON and/or his Group, from the time of his tenure in the Postal Service until the present, maintained a direct and substantial connection with this project at all levels, including procurement planning, design, management, liaison, and contracting.

In the final analysis, SEIGH'S allegation, reduced to its essence is that, given the information that HENDRICKSON KNIGHT, CARGILL and the others obtained prior to leaving the POSTAL SERVICE and that which they thereafter obtained (especially during the design phase of the work), NAB-LORD'S bid, by virtue of their exclusive arrangements with ROHR, was tainted with the fruits of the knowledge of the design team not available to the other bidders.

On behalf of the Joint Venture, I can also state to the Court that, if the plaintiff Joint Venture had had the information which we believe is in the hands of ROHR, NAB-LORD and their employees, and which was gathered primarily as a result of their employment by the POSTAL SERVICE and thereafter, by the designer, then the Joint Venture's bid to the defendant, UNITED STATES POSTAL SERVICE, would have been significantly lower and, conceivably, lower than the bid of the NAB-LORD Joint Venture.

I believe that, if SEIGH'S allegations and the other relevant facts are correct (and they appear to be consistent with ROHR'S refusal to give a quotation to the Joint Venture), that there has been a grievous violation of the Postal Contracting Regulations, which taints the bid submitted by NAB-LORD, which renders illegal any award to or execution of a contract between NAB-LORD and the UNITED STATES POSTAL SERVICE.

THE BASIS OF THE BID PROTEST:

Shortly after the Joint Venture became acquainted with the facts related by Mr. SEIGH, it forwarded a bid protest by telegram to the defendant, UNITED STATES POSTAL SERVICE, attention General Manager Facilities and Building Department. (A copy of that protest is annexed hereto as Exhibit "C"). Thereafter, a conference was held on December 12, 1974, at which time, representatives of the Joint Venture met with the Postal Service Contracting Officer, Malvin Beller, and William P. Bennett, Esq., representing the General Counsel of the Postal Service.

At the conference on December 12, all of the facts that had been related to Joint Venture personnel by SEIGH and others were revealed to the POSTAL SERVICE and additionally, on December 16, 1974, a memorandum was forwarded by the Joint Venture's general counsel directly to the Contracting Officer. (A copy of the memorandum submitted is annexed hereto as Exhibit "D").

Thereafter, in accordance with the provisions of 2-407.3 (n), Postal Contracting Manual, a decision was rendered by the defendant, JAMES J. WILSON, Assistant General Counsel, Contracts And Property Division, denying MORGAN ASSOCIATES' protest. (A copy of that decision is annexed hereto as Exhibit "E").

Our counsel have advised us that the primary basis on which a bid may be declared illegal or an award vacated, is that the Agency making that award has violated its own regulations in the contracting process.

There are at least two regulations which govern Postal Service construction procurement (the entire group of which are known as the "Interim Regulations For The Procurement Of Construction No. 74-2", dated June 12, 1974), applicable here.

Our counsel has not, thus far, been able to obtain a full set of these applicable Interim Postal Contracting Regulations. Counsel advise that an attempt has been made to obtain them from the Government Printing Office but they have not been available since October 1974, with no advice as to when the Regulations will be available to the public. In any case, the Joint Venture intends to subpoena those Regulations upon the hearing of the within application and, at that time, will provide the Court with a full and complete copy.

The two regulations to which I have referred above,

the text of which we have been able to obtain and which bear on the issues in this dispute are 18-506, entitled "Specification" and 18-511, "Construction Contracts with Design Architect-Engineers", are as follows:

"18-506 (a) The technical provisions of construction specifications shall be in sufficient detail so that, when used with the applicable drawings, bids can be prepared by contractors, material suppliers, and manufacturers on a fair and competitive basis, and construction can be completed without additional construction specifications, except those necessary to deal with unforeseen conditions or to accomplish changes during construction. Materials and equipment shall be described, where possible, by reference to documents generally known to the industry. The use of specifications and standards shall be governed by Section 1, Part 2."

"18-511 No contract for construction of a project shall be awarded to a firm or person that designed the project, except with the approval of the Assistant Postmaster General, Real Estate and Buildings Department or his authorized designee."

The fair intent of those regulations is, I believe, clear. In essence, they provide that construction specifications are required to be drawn in such a manner as to provide a fair and competitive basis on which a bid can be prepared and that a contract for construction should not be awarded to a firm or person that designed the project.

In addition to the foregoing two regulations, the Postal Contracting Manual, which is a compendium of all purchasing regulations relating to all Postal Service procurement (including construction where there is no conflict with the more specific regulations), contains two additional regulations and statements of policy which are applicable to the present case, viz.:

"1-301.1 Competition. All purchasing, whether by formal advertising or by negotiation, shall be made on a competitive basis to the maximum practicable extent."

and

"1-304.1 General. It is Postal Service policy:

(i) To make all procurements on a competitive basis to the maximum practicable extent ... "

The Postal Service's decision on the protest illustrates, perhaps best of all, the defendants' failure to deal directly with the issues at hand, once they were advised of the pertinent facts which surround the NAB-LORD bid submission.

As the Court will note from the Decision, no attempt was made by the POSTAL SERVICE to deny any of the operative allegations which were presented by the Joint Venture in support of the protest.

The Service, has instead, demonstrated a patent naiveté and clearly exalted form over substance. In support of its denial of the protest, two arguments are offered:

The first is that HENDRICKSON could not have used information obtained during his Postal Service employment, since he left the Service in July of 1970 and the design specifications and layout drawings were not developed until almost two years after HENDRICKSON left the POSTAL SERVICE.

That conclusion, I submit, is simply incredible, since it is apparent that plans, even if not final, were developed for the MORGAN STATION FACILITY after the fire in 1967. As a matter of fact, a newspaper article in the New York Construction News of July 15, 1968, indicated that a joint venture of architects and engineers, including S. W. BROWN & ASSOCIATES, were currently working on preliminary plans. A copy of the article is attached as Exhibit "F".

On August 30, 1971, HENDRICKSON, on the stationery of Hendrickson & Anderson, wrote to Jervis B. Webb Company.

That letter is referred to in the affidavit of WILLIAM SEIGH, sworn to December 10, 1974, at Page 4, but a copy was not annexed to that affidavit. For the convenience of the Court, attached hereto, as Exhibit "3" is a copy of the letter. While I am mindful of the fact that HENDRICKSON, at the time the letter was written, was "selling" himself to the WEBB Company, nevertheless, his letter discloses substantial information which indicates that he apparently knew just what the POSTAL SERVICE mechanization requirements were actually going to be. It is quite obvious that HENDRICKSON'S and/or his Group's subsequent participation in the final design team of S. W. BROWN & ASSOCIATES, could have only materially and significantly buttressed and increased the quantum of that very important knowledge and information.

In the second argument offered in support of the denial of the protest and in order to avoid the thrust of Regulation 18-511, and HENDRICKSON'S, KNIGHT'S and CARGILL'S obvious connection and role in the design process, the POSTAL SERVICE went even more out of its way to avoid logic and good reason.

While it is true that technically, if an award is made to NAB-LORD, a contract will not have been consummated directly with a firm or person that "designed the project", it is equally true that through patent subterfuge, the same result, if permitted by this Court, will be obtained, thereby violating the spirit and intent of the regulation.

As the SEIGH affidavit makes clear, it is apparent that ROHR refused to bid to MORGAN ASSOCIATES because ROHR was inextricably involved in the Joint Venture through its exclusive arrangement with NAB-LORD, and was therefore bound to divulge the fruits of its prime relationships with the designer and the POSTAL SERVICE to NAB-LORD, and no one else.

It is also now apparent and reasonable to infer that, if ROHR withdrew from the proposed joint venture with NAB-LORD, the withdrawal was prompted by Regulation 18-511 and the exclusive subcontract arrangement substituted therefor.

I submit to the Court that this behavior, in substance, constitutes a wilful and deliberate violation of the Regulations referred to above which require fair and competitive bidding on equal terms and which prohibit the designer of a construction project from participating in the fruits of his design to the exclusion of all other contractors competing in the market place.

THE PRESSING NEED FOR AN INJUNCTION:

I am informed by our counsel that, in order for the Court to grant the injunctive relief that we have requested, four significant criteria must be satisfied:

- A. That the plaintiff has a strong likelihood of prevailing upon the merits:

Your deponent respectfully submits that based

upon the foregoing, and the substantive violation of the Regulations referred to above, that it is likely that the plaintiff will prevail upon a trial of this action;

- B. That the plaintiff would be irreparably injured without the granting of injunctive relief:

Your deponent respectfully submits that the possibility of injury to us is indeed significant, since the award and execution of a formal contract cannot be compensated by damages or any other legal remedy.

- C. That the injunctive relief requested would not substantially injure other persons:

Insofar as the possible injury to other persons is concerned, the plaintiffs have recently received a request from the UNITED STATES POSTAL SERVICE that we extend the bid acceptance period (which was to expire on or about January 20, 1975), for an additional period of thirty days. By a letter dated January 9, 1975, we granted the extension to the POSTAL SERVICE and upon information and belief, the other two bidders have also done the same.

It would appear then that there is no possibility of any damage accruing to the POSTAL SERVICE for at least thirty days and, if the application for injunctive relief should not be decided within that period of time, a further extension could be requested. At the worst, the POSTAL SERVICE would be required to re-advertise for bids for the entire

project. A small price to pay, your deponent submits, to insure the integrity of the contracting regulations which are at stake in this case.

D. That the public interest will not be significantly harmed:

Again, your deponent would submit that the sanctity of the bidding process and the public's interest in maintaining a free and competitive market place, more than outweighs any short delay which may accrue to the POSTAL SERVICE in commencing the construction project.

In this connection, the Joint Venture's attorneys are prepared to do all that is necessary to immediately commence the depositions requested as part of the present application on short notice and to thereafter, proceed with the hearing of the application for temporary injunctive relief as soon as physically possible.

THE APPLICATION FOR A TEMPORARY
RESTRAINING ORDER:

As the Court can appreciate from the tenor of this application and the position thus far taken by the POSTAL SERVICE, this entire proceeding could be easily and entirely frustrated if the Service were to make the award to NAB-LORD ASSOCIATES and thereafter, to promptly execute the construction contract. If that is accomplished and the Court should subsequently find the award to have been illegal, the damage which would then be done if the contract were required to be

"unmade", would be significantly greater. Because of the foregoing circumstance, it is vitally important that a temporary restraining order be granted to the plaintiff in order that all parties remain in a status quo position until an adjudication can be made of the remainder of the application for temporary injunctive relief.

THE APPLICATION FOR DEPOSITIONS:

While the facts disclosed by SEIGH, together with the proof which we have thus far been able to assemble, would appear to be sufficient to initially support the application for injunctive relief and in particular, the need for a temporary restraining order, we believe that there is substantial additional evidence which should be developed for the hearing to be held in connection with the application for an order for temporary injunction.

In order to further develop the evidence required, we have requested the Court to order the immediate deposition by oral testimony of certain critical witnesses. We believe the narrative of events thus far clearly demonstrates the need for those depositions. Specifically, our request is made to develop the following information:

1. From Messrs. HENDRICKSON, KNIGHT and CARGILL, the exact extent of their familiarity with the MORGAN Project prior to 1970 and thereafter; in particular, their knowledge of the construction and mechanization requirements that had been developed prior to that

date and thereafter, during their association with the design team.

2. From the defendant, UNITED STATES POSTAL SERVICE, a complete examination of all of the facts, in particular, from 1967 until the present, concerning the planning, design and construction of the MORGAN FACILITY. This examination is of particular importance, in view of the POSTAL SERVICE'S complete silence in this matter, except for the bid protest decision which, rather than standing as a denial of the operative allegations made by the plaintiff only avoids the issues with an unreasonable formalism.

3. The depositions of NAB-LORD ASSOCIATES and ROHR-PLESSEY CORPORATION with particular reference, to the proposed bidding arrangements and contractual matters, both tentative and complete, that existed between NAB-LORD and ROHR prior to the bid opening and in contemplation of an award.

4. S. W. BROWN & ASSOCIATES, with particular reference to their relationship with PAUL HENDRICKSON.

In this same connection, it is, of course, relevant and important to determine from all of the witnesses, the extent to which the information possessed by HENDRICKSON, KNIGHT and CARGILL, that was obtained either during their employment by the POSTAL SERVICE, or by the Project Designer, was, in fact, passed on to NAB-LORD ASSOCIATES, prior to the

bid opening.

As I have pointed out to the Court, plaintiff is prepared to commence these depositions without delay and at such times and places as may be most convenient to the witnesses involved, in the hope that the entire proceeding may be brought on for a speedy adjudication on the merits.

CONCLUSION:

I respectfully submit to the Court, that the plaintiff in this action has a meritorious cause of action and that its application for injunctive and other relief is immediately required, for all of which relief requested herein, no previous application has been made to any other Court or a Judge thereof.

I respectfully request that the plaintiff's application be granted in all respects, together with such other and further relief as to the Court may seem just, proper and equitable in the premises.

ANTHONY M. DINALLO

Sworn to before me this
13th day of January 1975.

ALLEN ROSS
Notary Public, State of New York
No. 100000000
Qualified in New York County
Term Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MORGAN ASSOCIATES, a Joint Venture of
TERMINAL CONSTRUCTION CORPORATION,
THE DIC CONCRETE CORPORATION,
UNDERHILL CONSTRUCTION CORP. and
NAGER ELECTRIC COMPANY, INC.,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,
ELMER T. KLASSEN, POSTMASTER GENERAL,
JAMES J. WILSON, Assistant General Counsel, :
UNITED STATES POSTAL SERVICE,
CONTRACTS AND PROPERTY DIVISION,

Defendants.

JUDGE POLKACK
Civil Action
File No.
: 75 CIV. 117

: COMPLAINT

Plaintiff, complaining of the defendants, by
M. CARL LEVINE, MORGULAS & FOREMAN, its attorneys, alleges:

1. At all times hereinafter mentioned, plaintiff was and still is a Joint Venture consisting of TERMINAL CONSTRUCTION CORPORATION, a New Jersey corporation, THE DIC CONCRETE CORPORATION, a New York corporation, UNDERHILL CONSTRUCTION CORP., a New York corporation, and NAGER ELECTRIC COMPANY, INC., a New York corporation, said Joint Venture having its principal place of business c/o TERMINAL CONSTRUCTION CORPORATION, State Highway #17, Wood-Ridge, New Jersey.

2. At all times hereinafter mentioned, UNITED STATES POSTAL SERVICE was and still is an independent establishment of the Executive Branch of the Government of

the United States.

3. At all times hereinafter mentioned, the defendant, ELMER T. KLASSEN was and still is the Postmaster General of the United States. Said defendant is made a party hereto because the contract hereafter described may be awarded and if awarded, will be awarded and executed under his direction and control.

4. At all times hereinafter mentioned, the defendant, JAMES J. WILSON, was and still is the Assistant General Counsel, Contracts and Property Division of the United States Postal Service. Said defendant is made a party hereto because he is in direct charge, under the Postmaster General, of awarding the contract and acted on the bid protest hereafter referred to.

5. Upon information and belief, at all times hereinafter mentioned, NAB-LORD ASSOCIATES was and still is a Joint Venture consisting of NAB CONSTRUCTION CORP., a New York corporation, and LORD ELECTRIC COMPANY, INC., a Delaware corporation, with its principal place of business c/o LORD ELECTRIC COMPANY, INC., 45 Rockefeller Plaza, New York, N.Y.

6. Jurisdiction of this Court is invoked pursuant to 39 U.S.C. §409.(a); 28 U.S.C. §1339; 28 U.S.C. §1331; 28 U.S.C. §1361; and 5 U.S.C. §701, et seq.

7. That heretofore and on or about August 26, 1974, the defendant, UNITED STATES POSTAL SERVICE, acting by and through its General Manager, Facilities Procurement Division,

Real Estate And Building Department, issued an Invitation For Bids, known as Invitation No. R.E.B. 74-8, for the general reconstruction of the UNITED STATES POST OFFICE, MORGAN STATION, New York, New York, more particularly described in the said Invitation, to the true terms and conditions of said Invitation For Bid, and the plans and specifications accompanying said Invitation, the plaintiff begs leave to refer upon the trial of this action with the same force and effect as if fully set forth at length herein and hereby incorporates the same by reference.

8. That bids were opened by the defendant, UNITED STATES POSTAL SERVICE, in connection with the aforesaid Invitation, on November 21, 1974, and on said opening the following were the bids:

1. NAB-LORD ASSOCIATES (a Joint Venture)
\$51,480,000.00,
2. Plaintiff, MORGAN ASSOCIATES (a Joint Venture)
\$54,444,000.00,
3. Fishbach And Moore, Incorporated,
\$62,000,000.00.

9. Upon information and belief, the apparent low bid submitted to the UNITED STATES POSTAL SERVICE by NAB-LORD ASSOCIATES, was arrived at, in substantial part, by the use of relevant and material information obtained by NAB-LORD ASSOCIATES from individuals formerly employed by the UNITED STATES POSTAL SERVICE or its predecessor in interest, and from individuals of the design firm engaged, directly or indirectly by the UNITED STATES POSTAL SERVICE, which material

and relevant information was not made available by the UNITED STATES POSTAL SERVICE to the plaintiff or other bidders.

10. Upon information and belief, that the material and relevant information obtained by NAB-LORD ASSOCIATES, imparted to the said NAB-LORD ASSOCIATES, a competitive bidding advantage with respect to the Invitation For Bids referred to above, which was not otherwise made available to plaintiff or other bidders.

11. That the foregoing was accomplished with the knowledge, direct or indirect, of the UNITED STATES POSTAL SERVICE and under such circumstances as caused the bid submitted by NAB-LORD ASSOCIATES in response to Invitation No. R.E.B. 74-8 referred to above, to be tainted and further violated the purpose and intent of the competitive bidding rules and regulations.

12. Upon information and belief, in violation of appropriate contracting regulations, applicable rules, regulations and statutes, the defendant, UNITED STATES POSTAL SERVICE, intends to award the contract, described in the Invitation of the MORGAN STATION POST OFFICE FACILITY to the apparent low bidder, NAB-LORD ASSOCIATES.

13. That the plaintiff, after first receiving information on November 27, 1974 concerning the infirmities surrounding the bid submitted by NAB-LORD ASSOCIATES, duly protested against the possible award of the contract to the apparent low bidder, NAB-LORD ASSOCIATES.

14. Thereafter, by a decision of the defendant, JAMES J. WILSON, Assistant General Counsel, Contracts And Property Division, United States Postal Service, acting on behalf of the defendant, POSTMASTER GENERAL ELMER T. KLASSEN, and the defendant, UNITED STATES POSTAL SERVICE, the plaintiff's bid protest was wrongfully, arbitrarily and capriciously denied, and in violation of the aforesaid regulations, rules and statutes.

15. That plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands judgment as follows:

A. that the Court restrain the defendant, UNITED STATES POSTAL SERVICE, and the defendant, POSTMASTER GENERAL ELMER T. KLASSEN, their agents, representatives and employees, from awarding, or if previously awarded, from entering into a contract with NAB-LORD ASSOCIATES for the contract described in the Invitation, during the pendency of the trial of the within action;

B. that the Court permanently restrain the defendant, UNITED STATES POSTAL SERVICE, and the defendant, POSTMASTER GENERAL ELMER T. KLASSEN, their agents, representatives and employees, from awarding and, if previously awarded, from entering into a contract with NAB-LORD ASSOCIATES for the contract described in the Invitation;

C. that the Court direct the defendants, UNITED STATES POSTAL SERVICE and POSTMASTER GENERAL ELMER T. KLASSEN, acting by and through their

agents, representatives and employees, to award the contract described in the Invitation to the plaintiff and enter into a contract with the plaintiff pursuant to its bid;

D. that if award is not directed to be made to plaintiff, that defendants be directed to reject all bids and re-advertise for new bids for the contract hereinabove described;

E. that the Court award to the plaintiff the cost and disbursements of this action;

F. that plaintiff have such other and further relief as to the Court may be just, proper and equitable under the circumstances.

Dated: New York, N. Y.
January 9, 1975

M. CARL LEVINE, MORGULAS & FOREMAN

By: Allen Ross
A Member of the Firm

Attorneys for Plaintiff
MORGAN ASSOCIATES, a Joint Venture,
etc.,
Office and Post Office Address
747 Third Avenue
New York, N. Y. 10017
(212) #759-1720

STATE OF NEW JERSEY)
)SS:
COUNTY OF BERGEN)

I, William J.S. Seigh, Sales Engineer of Jervis B. Webb Company, having an office at 9000 Alpine Avenue, Detroit, Michigan, being duly sworn, on my oath, depose and say that to the best of my knowledge and information:

1. Paul Hendrickson was employed with the U.S. Postal Department at least from approximately 1960 through September, 1970 and held the position of Deputy Director of the Bureau of Research and Engineering, Office of Research and Engineering.

2. That while Paul Hendrickson was employed with the Post Office Department, plans were being developed for the refurbishing and remodernization of the Morgan Station Post Office facility located in New York, New York.

The Morgan Station Post Office was subject to a fire and suffered material damage during the year 1967. Subsequent to the fire, the Post Office Department commenced the implementation of plans, specifications, and designs for a new preferential mail facility relative to Morgan Station.

The postal department engaged a joint venture of architects and engineers consisting of Edward Durell Stone and Associates, principal architects, Frederic R. Harris, Inc., engineers, and Ames Associates, associated architects-engineers, to work on the plans for Morgan Station. S.W. Brown, consulting engineers, was to be responsible for the mechanical and electrical engineering work.

To the best of my belief, and, in my opinion, Paul Hendrickson was in a definite position of being privy to this information regarding the planning and development of the remodernization and design mechanization relative to Morgan Station.

The postal service, some time during the year 1970, after evaluating the cost and all other relevant factors, decided to postpone any further implementation of these plans until the bulk mail facility program (which was then being developed) was further

refined, after which they could concentrate and give further direction with respect to Morgan Station.

3. That some time during the latter part of the year 1970, Paul Hendrickson resigned from the postal department and operated as an independent and held himself out as a management consultant relative to work related to the U.S. Post Office Department.

4. In or about June of 1971, the Post Office Department elected to advertise and invite approximately six companies associated with the manufacturing and installation of material handling systems to compete on Phase I for a contract for the design of the mechanization portion of the Morgan Station Job (and, more specifically, for the alterations of the Morgan Station Facility).

My company, Jervis B. Webb, was among the six competing companies.

5. One of the organizations competing for the design contract was an entity called Butz Engineering Company of Azusa, California, hereinafter referred to as Butz. In this connection, Butz associated itself with a design and engineering oriented management consulting firm called Unidex, with the expectation that Unidex would be able to assist it in preparing the design for the proposal for the mechanization portion of the Morgan Station Job. Unidex engaged Paul Hendrickson to assist it in this endeavor.

It is my understanding that Clarence Butz, President of Butz Engineering Company, had a falling-out or disagreement with Paul Hendrickson and Butz then severed his relationship with Unidex.

6. Paul Hendrickson, some time thereafter, approached my firm and, more specifically myself, by telephone, and said that he had information that, of all of the bidders for this design contract, Jervis Webb would not be one of the two successful bidders (it being the intention of the postal department to select two of the six design manufacturers); however, although he knew that this matter concerning the selection of bidders was just about finalized within the postal department, he nevertheless implied that, with his help, Jervis Webb could become one of the two selected bidders.

More specifically, to the best of my recollection, I recall having received a telephone call from Paul Hendrickson wherein he stated to me that we were not one of the two companies selected; that the postal department was about to award design contracts to the firms of Butz and Rapistan.

This came as a surprise to me because we had every reason to believe that we were going to be one of the two companies selected.

Paul Hendrickson said that if we engaged him, he could be very helpful to us in this regard. We then engaged Mr. Paul Hendrickson.

Paul Hendrickson then suggested that we protest the bids submitted and any award to Rapistan and Butz because we were not afforded the opportunity to submit full and detailed information on the qualifications of Jervis B. Webb Company.

The postal service granted this protest and gave us, as well as all of the other bidders, additional time to supplement the proposals previously submitted. Webb was then awarded one of the two design contracts. The other entity that received an award was the Butz Company.

I might add, however, that our protest was prepared by our attorneys in close association with Paul Hendrickson.

7. Webb and the Butz organization were then selected to compete for an engineering contract for Phase I, Phase II being the fabrication and installation of the mechanization system.

I might point out at this time that both companies were selected to perform Phase I work; namely, the engineering design concept of the facility; that is to say, both entities would perform the engineering and design (and be paid for their work) and then upon completion, the postal service would select that design which was more beneficial to the Government.

However, I might back-track at this point by stating that Leo J. Anderson, former Director of Process Engineering for the Post Office Department, Ollie E. Knight and Thomas Cargill, both formerly employed with the postal department in an engineering

capacity, were all formerly working under Paul Hendrickson when he was with the postal service; that some time during the early to mid portion of 1971, these persons left the postal service and immediately became associated with Paul Hendrickson.

In fact, a management consulting firm was formed called Hendrickson and Anderson. This firm represented themselves as having expertise in acting as liaisons between the postal department and client organizations for the purposes of helping obtain and administer postal service contracts for client organizations.

Although when Paul Hendrickson first contacted me the firm of Hendrickson and Anderson was not, as yet, formed, the firm of Hendrickson and Anderson shortly came into existence thereafter.

As a matter of fact, on August 30, 1971, Paul Hendrickson wrote to me on the stationery of Hendrickson and Anderson, informing me that we would have a tough road to hoe and that Butz would be a rather formidable competitor relative to the Phase I portion of the work.

8. The technical and price proposals of both Butz and Jervis Webb were subsequently rejected by the postal department (some time in or about November of 1972) for the reason that the criteria of the mail system was changed.

JJS

By this time, the Corp of Army Engineers had already been engaged by the postal department to manage postal construction.

In this connection, in November of 1972, Paul Hendrickson called me and informed me that S.W. Brown Associates was going to get the design of the Morgan Post Office as an architect-engineer, and that Paul Hendrickson will be working with Sy Brown.

The Corp, in or about January, 1973, gave the architectural, engineering and design contract for the building and mechanization of Morgan Station to a joint venture of architects and engineers consisting of S.W. Brown & Associates, Ames Associates, and Frederic R. Harris, Inc.

S.W. Brown Associates, consulting engineers, was assigned the design of the mechanization system by the joint venture.

Ollie E. Knight and Thomas Cargill, employees of Hendrickson and Anderson, were, either individually or as employees of Hendrickson and Anderson, engaged in a design capacity by Sy Brown Associates to perform the design work for the mechanization portion of the Morgan Station Job. To the best of my recollection, they were engaged and working on the drawings commencing in the early part of 1973 and working continuously thereafter until final approval and acceptance by the Government; the Government contract drawings which were submitted to all bidders bear the date March, 1974 and show the initials O.E. K. and T.C.C., which I firmly believe to be the initials of Ollie E. Knight and Thomas C. Cargill.

On April 10, 1973, Paul Hendrickson (on Hendrickson, Anderson, Inc. letterhead, the entity which was the successor in interest to Hendrickson and Anderson) notified me by letter that he had accepted the position of President of Rohr-Plessey to be effective some time during the month of April, 1973.

In this connection, Leo Anderson, Ollie E. Knight, and Thomas C. Cargill maintained employment with Paul Hendrickson and I believe, but am not sure, became employees of Rohr-Plessey; in any event, there was definitely some employer-employee relationship between Anderson, Knight and Cargill on the one hand, and Paul Hendrickson and/or Rohr on the other.

Ollie E. Knight and Thomas C. Cargill were employees and/or associated with Paul Hendrickson at the time they were working on the design portion of the mechanical handling system for the postal department; continued to do so after Hendrickson's connection with Rohr-Plessey; and continued thereafter until finalization of the government plans and specifications relative to this job.

9. On September 17, 1974, Paul Hendrickson, in his capacity as President of Rohr-Plessey, called me and informed me that Rohr was going to joint venture the Morgan Station bid with Lord Electric Company and that he would like us to join them. We refused.

He said to me at this time that "if Webb joined us, we would be eliminating Rohr's competition, if any."

10. In a casual conversation had somewhere between September, 1974 and the opening of the bids on this job, I spoke to a Mr. Jim Coner, a knowledgeable control man employed with Lord Electric, who confirmed my suspicions and the rumors in the industry that Lord Electric Company was joint venturing this job with Rohr-Plessey.

It was common knowledge in the industry that there was going to be a joint venture agreement between Nab Construction Company, Lord Electric Company, and Rohr-Plessey.

11. On November 25, 1974, I received a telephone call from Harry Golinger, Vice President of the New York Office of Lord Electric, and, among other things, I told him that I was very surprised that the joint venture did not include Rohr-Plessey.

He informed me that up until two weeks prior to the bid opening date, there was, in fact, a proposed joint venture of Nab, Lord and Rohr and that they were very surprised when Rohr-Plessey informed them approximately two weeks ago that they would not be a member of the joint venture.

Harry then told me that Plessey-Rohr bid as an exclusive subcontractor to Nab and Lord, with the agreement that if the joint venture of Nab and Lord won the contract, Rohr would receive the contract for the mechanization.

12. The apparent low bidder, by its association with Rohr-Plessey, was in a position of having available to it very material information which was not available to other bidders and which would most definitely have a direct bearing on the amount of their proposal.

Because of Hendrickson's background with the postal service and, more importantly, because of Messrs. Knight and Cargill's direction of the preparation of the government design drawings and specifications for the mechanization portion of this job, Rohr-Plessey was in a position of being familiar with the general layout and condition of the structure itself, of having available to it substantial engineering information relative to this job as well as being familiar with the design of the mechanization system, all of which would most definitely put them in a position of having an unfair competitive advantage over the other bidders.

Inasmuch as employees of Rohr-Plessey and/or Hendrickson were involved in the engineering of this job from its inception, they were most definitely in a position of having available to them very meticulous and detailed engineering information for the total scope of this job, including each and every system of the mechanization.

Moreover, many items cannot possibly be shown on the drawings and can only be obtainable by a detailed engineering study which would require an excessive amount of engineering work and actually involve getting into the job itself.

There are a countless number of items which require detail design and which can only be determined after exhaustive and detailed engineering work is performed.

However, I will attempt to expound upon a few of such areas.

The specifications state that certain conveyors must be able to carry both letter and flat trays and also be able to read and write codes on the two trays within the same conveyor system.

To my knowledge, this has never before been done. However, I feel that given sufficient lead time to prepare the necessary engineering work, a proper control system could be in fact devised. It is obvious that there was not enough time available prior to the bid date for such work to be performed.

However, Rohr-Plessey (for the reasons outlined above) was in a position of having ample time and opportunity to determine an economical solution in this regard. Their personnel were responsible for the requirements of the specifications pertaining to this function and were in a position to avail themselves of this competitive advantage.

Moreover, Section 5A of Division 5 of Volume I of the technical specifications (and, more specifically, Subdivision 8 thereof entitled "Performance Specification for Construction of Ceiling-Framing Panels for Support of Mechanization Loads and Lookout Galleries in the Second through Sixth Floors") places on the successful bidder the total responsibility for the design, fabrication and erection of the structural steel framing to support the mechanization and lookout galleries and places the responsibility on the successful contractor of retaining a "licensed professional engineer" to design this work and coordinate all of the subcontract disciplines.

Subdivision 12 of Section 5A states that the successful contractor must include, in his proposal, payment for furnishing all of the engineering, plant, labor, materials, equipment and incidentals necessary to design, fabricate and erect the specified structural steel, including the preparation of design and shop drawings.

Moreover, the following question was raised at a pre-bid conference and the following answer was given in connection therewith: 54

Question: the first volume of the specifications has lots of sketches indicating structural steel layouts. Is this a guideline on how to do it? Should the contract be bid based on volume of steel indicated on these sketches? (meaning the sketches referred to in the Appendix to Section 5A).

Answer: the total tonnage required is the responsibility of the bidder.

The above places total and complete responsibility on the successful bidder to determine the extent and the exposure it would have in furnishing the structural framing for the entire system.

Further, according to the specifications (as well as the answers furnished at the pre-bid conference), the bidders are not permitted to rely upon the design drawings contained in Appendix A of Section 5A. The bidders are informed that they shall have the responsibility to determine the size and exact locations of required structural components and that the informational material presented in the drawings contained therein (i.e., Appendix A) is intended to serve as a guideline and merely represents "suggestions" relative to framing and connections.

It is a possibility, and I believe in this case probable, that the design information contained in Appendix A is overdesigned and perhaps materials more economical could be substituted for that "suggested" in Appendix A. However, one could not possibly know about this until the completion of detailed engineering work subsequent to any award of contract.

For example, the specifications clearly state in Subdivision 8.7.2.5 that the members appearing in said Appendix A are admittedly uneconomical; however, the other bidders would have to nevertheless govern themselves accordingly and reflect the same in their proposals, whereas a party who is privy and in fact actually involved in the preparation of this requirement in the specifications would most definitely be in a position of knowing whether or not to rely on the same for bidding purposes or whether or not the same was in fact purposely designed that way to lead other bidders astray.

In sum, whenever you are involved in a performance type of specification, there are certain costs that must be provided for in your proposal (costs which could very well have been avoided and discounted by a party who is in a position of having available to it complete and exhaustive engineering and design information).

Since Rohr-Plessey and/or Hendrickson's personnel were involved directly with the mechanization design of this project, they, and any bidder directly associated with them, would have an obvious unfair competitive advantage over the other bidders.

Moreover, they also were in a position of having available to them very detailed working drawings not available to other bidders and which obviously must represent a very significant cost item to the other bidders.

It can be logically presumed that persons involved with the design of this system over an extended period of time would have information which was much more precise than that called for in the specifications.

A person responsible for the preparation of the government design drawings would know, or at least be in a position of knowing, whether or not they could accept the design concept contained within the specifications at face value, whereas bidders not privy to this information would have to make their own independent judgment in this regard.

If all of the bidders were in a position of having this engineering and design information available to them, they would be in a position of knowing whether or not they could rely on the drawings and information materials contained within the specifications for bidding purposes.

Not having this information available, means that the other bidders and their subcontractors would have to bid this job as they in fact see it rather than relying on the drawings and informational material contained within the bid documents. Moreover, if they were to rely on this information, there is still the possibility that these drawings may, in fact, be overdesigned which obviously could lead them astray.

I think you can appreciate my point. The whole key to the competitive advantage possessed by the apparent low bidder (through its association with Rohr-Plessey) is that they had this detailed engineering and design work available to them for a very long period of time and were in a position of knowing the actual condition of the structure itself, all of which is invaluable, to say the least, especially in connection with an alteration job such as this.

The specifications state that certain postal service property will be furnished to the contractor for installation.

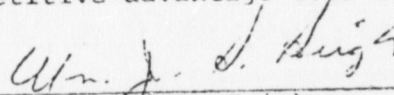
Since the cost for this installation work could be very significant, my company was very anxious to determine exactly what type of equipment was to be furnished; however, in certain instances, we were unable to obtain any information other than the estimated weight of such equipment.

This precluded any detailed judgment relative to the installation hours required for this type of equipment.

However, I am reasonably certain that this information concerning this type of equipment, etc. was surely available to the design group working on the engineering phase of this job.

In sum, the most important factor involved in a performance type of specification such as this is the engineering analysis of the performance requirements, which obviously cannot be completed until after award of the contract; however, since Rohr's people (and therefore the Nab-Lord alliance for the reasons outlined above) were the designers and engineers of this operation, they had ample information and time to determine not only what would be required or necessary but also what should not be so necessary or required.

All of the above, in my opinion, clearly demonstrates that there was very material information available to the apparent low bidder which afforded them an unfair competitive advantage over the other bidders.


William J.S. Seigh

Sworn and subscribed to

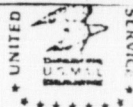
before me this 24 day
of December, 1974

ROBERT GILSON
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES APR. 4, 1975

MGMNKT HSB
2-018975E333002 11/29
ICS IPHMTZZ CSP

WESTERN UNION

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HELLER AND LAIKS ATTORNEYS BL
77 PASSAIC AVE
PASSIC NJ 07055

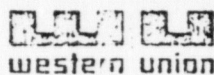
THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

2017772600 NL TDMT PASSAIC NJ 377 11-29 0421P EST
PMS US POSTAL SERVICE GENERAL MANAGER FACILITIES AND BUILDING
DEPT, DLR
RM 8965 475 WEST LIENFANT PLAZA SW
WASHINGTON DC 20260

THE UNDERSIGNED MORGAN ASSOCIATES
A JOINT VENTURE WHICH SUBMITTED A BID ON INVITATION R.E.B. 74-8
FOR THE UNITED STATES POST OFFICE MORGAN STATION, NEW YORK, HEREBY
PROTESTS THE BID SUBMITTED BY NAB-LORD ASSOCIATES.
IT IS OUR PRESENT INFORMATION THAT PAUL HENDRICKSON PRESIDENT
OF ROHR-PLESSEY, WAS FORMERLY EMPLOYED WITH THE UNITED STATES
POSTAL SERVICE IN A SENIOR POSITION AT THE TIME THE NATIONAL
BULK MAIL FACILITY PROGRAM WAS IN ITS PLANNING AND DEVELOPMENTAL
STAGE (INCLUDING THE BULK MAIL FACILITY PROGRAM AT MORGAN STATION)
AND WAS ALLEGEDLY IN A POSITION OF BEING PRIVY TO SUBSTANTIAL
KNOWLEDGE AND INFORMATION UNAVAILABLE TO OTHER BIDDERS. KEY
EMPLOYEES OF HENDRICKSON, AND ROHR-PLESSEY WERE EMPLOYED BY THE
DESIGN FIRM WHICH WAS COMMISSIONED BY REPRESENTATIVES OF THE
POSTAL SERVICE TO PERFORM AND DESIGN AND ENGINEERING WORK FOR
THE MECHANIZATION PORTION OF THIS PROJECT. THESE INDIVIDUALS
WERE PRIMARILY RESPONSIBLE FOR THE ENTIRE DESIGN AND ENGINEERING
FOR THE MATERIAL HANDLING SYSTEM AT MORGAN STATION AND WERE
PRIVY TO INFORMATION NOT AVAILABLE TO OTHER BIDDERS AND THESE
PERSONS WERE THEN AND ARE STILL NOW KEY EMPLOYEES OF ROHR-PLESSEY
AND OR HENDRICKSON. THESE INDIVIDUALS INITIALS APPEAR ON THE
FINAL GOVERNMENT CONTRACT DRAWINGS RELATIVE TO THE MECHANIZATION
PORTION OF THIS PROJECT.

IN ADDITION WE ARE INFORMED THAT ROHR-PLESSEY REFUSED TO SUBMIT
PROPOSALS OF ANY KIND FOR THE OF FORMENTION MECHANIZATION TO
ANY OTHER BIDDERS AND ONLY SUBMITTED A PROPOSAL TO NAB-LORD
ASSOCIATES WITH THE UNDERSTANDING IT WOULD NOT SUBMIT ANY PRICE
TO ANY OTHER BIDDERS AND WOULD BE ITS SUBCONTRACTOR AND OR PART
OF A JOINT VENTURE. ANY ATTEMPT TO AWARD THIS CONTRACT TO NAB-LORD
ASSOCIATES WOULD REWARD THE JOINT VENTURE AND ROHR-PLESSEY FOR
ITS UNFAIR COMPETITIVE ADVANTAGE ALL OF WHICH IS APPARENTLY
A DIRECT AND SUBSTANTIAL VIOLATION OF THE FAIR AND OPEN PUBLIC
COMPETITIVE BIDDING LAWS TO THE DETRIMENT AND CONTRARY TO THE
INTERESTS OF THE POSTAL SERVICE, THE OTHER BIDDERS AND THE GENERAL
PUBLIC. MORGAN ASSOCIATES BID WOULD HAVE BEEN SUBSTANTIALLY

C



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LOWER HAS IT AVAILABLE THE INFORMATION AND KNOWLEDGE SOLELY
IN THE POSSESSION OF NAB-LORD ASSOCIATES THROUGH ITS ALLIANCE
WITH HENDRICKSON AND OR ROHR-PLESSEY.

WE RESPECTFULLY REQUEST A HEARING ON THIS PROTEST BEFORE ANY
FURTHER ACTION IS TAKEN BY YOUR DEPARTMENT AND PRIOR TO ANY
AWARD OF A CONTRACT FOR THIS PROJECT.

MORGAN ASSOCIATES P O BOX 175 WOODRIDGE NJ 07075

16121 EST

MGMNWKJ HSB

LAW OFFICES

HELLER & LAIKS

A PROFESSIONAL CORPORATION

77 PASSAIC AVENUE

PASSAIC, NEW JERSEY 07055

AREA CODE 201
PHONE 777-2500AARON HELLER (1924 - 1959)
MURRAY A. LAIKS
~~CHARLES ROSENBERG~~
~~DAVID WALDMAN~~
HERBERT H. EZOR

December 16, 1974

OUR FILE: 12,081

Mr. Malvin Beller
Contracting Officer
Facilities Procurement Division
Real Estate & Buildings Department
U. S. Postal Service
475 L'Enfant Plaza West, S.W. - Room 8963
Washington, D. C. 20260

RE: Protest of Morgan Station Bid

Dear Mr. Beller:

In accordance with our understanding at your office at the time of the hearing on the above matter on December 12, 1974, there is enclosed herein a memorandum of the protestant, Morgan Associates. Copies of this letter and the memorandum are being sent to William P. Bennett, Esq., Counsel to the Postal Service.

This is being sent to you in accordance with your representation, made at the hearing, that this would be for the exclusive use of the Postal Service in connection with this matter and would not be made available to any others.

Should you desire any additional data or further information in connection with this protest, we would be pleased to furnish the same on your request.

Very truly yours,

MAL:b

Enc.

CC (w/enc.): William P. Bennett, Esq.
Counsel, U. S. Postal Service
475 L'Enfant Plaza West, S.W. - Room 9020E
Washington, D. C. 20260

BCC (w/enc.): Morgan Associates
Post Office Box 175
Wood-Ridge, New Jersey 07075

UNITED STATES POSTAL SERVICE

IN THE MATTER OF THE PROTEST
OF THE BID OF NAB-LORD IN
CONNECTION WITH INVITATION
NO. R.E.B. 74-8 FOR THE MORGAN
STREET STATION POST OFFICE IN
NEW YORK, NEW YORK

: Before
: Malvin Beller,
: Contracting Officer
:
:
:

MEMORANDUM IN BEHALF OF MORGAN ASSOCIATES SUPPORTING PROTEST

Heller & Laiks,
A Professional Corporation
Attorneys for Protestor
77 Passaic Avenue
Passaic, New Jersey 07055
(201) 777-2600

On the 21st day of November, 1974, the Post Office Department received bids pursuant to invitation No. R.E.B. 74-8 for the alteration and mechanization of the Morgan Station post office facility located in New York City. The following bids were received:

- | | |
|--|--------------|
| 1. Nab-Lord Associates (a joint venture) | \$51,480,000 |
| 2. Morgan Associates (a joint venture) | \$54,444,000 |
| 3. Fischbach and Moore | \$62,000,000 |

After the submission of bids and on November 27, 1974 (the day before Thanksgiving), Morgan Associates (hereinafter referred to as "Morgan") learned of certain shocking and material facts which prompted Morgan to file a protest against any award to Nab-Lord with the United States Postal Service (hereinafter referred to as the "Department") in the form of a telegram dated November 29, 1974. A copy of said telegram is attached hereto and marked Exhibit A. The telegram was sent on the first business day after receipt of this information.

Following the delivery of the telegram, the contracting officer acknowledged receipt of the protest and by mutual agreement fixed December 12, 1974, as the date and his office in Washington as the place for a hearing on the protest. At the hearing, the following persons were present before Malvin Beller,

the contracting officer:

Anthony M. Dinallo, President of Terminal Construction Corporation, one of the members of Morgan

Max Eisenstein, Executive Vice President, Terminal Construction Corporation, one of the members of Morgan

Bennett S. Lazare, Assistant to the President of Terminal Construction Corporation, one of the members of Morgan

Morgan was represented by Murray A. Laiks, of Heller & Laiks, General Counsel for Morgan.

The Department was represented by William P. Bennett of the General Counsel's office of the Department.

At the hearing, Morgan went into and amplified the facts set forth in the telegram and also offered, if required, to substantiate all statements by testimony and documentation or such other method as the contracting officer might require. It was suggested that Morgan might desire to submit a Memorandum setting forth its position which had been orally related at the hearing, and which memorandum would be maintained in the sole and exclusive custody, possession and control of the Department and would not be exhibited to anyone other than official personnel of the Department in relation to this matter.

In response to that suggestion, we submit this Memorandum which is intended to highlight and summarize the salient facts concerning the reasons for the protest.

The Nab-Lord Associates (hereinafter referred to as "Nab-Lord") was a joint venture originally intended to be a joint venture consisting of Nab Construction Company, Lord Electric, and Rohr-Plessey Corporation. This joint venture arrangement was common knowledge on the street and in the trade, and it was only at the last moment, according to indisputable information in our possession, that Rohr-Plessey, by its own initiative and volition and in format only, withdrew as a named member of the joint venture and in its place and stead assumed a position of a locked and exclusive mechanization subcontractor to the Nab-Lord joint venture. We are informed that it was Rohr's counsel who advised it not to assume an out front position as a member of the joint venture. Thereupon Rohr conceived this exclusive subcontractor arrangement as a viable substitute which would serve in effect the very same purpose.

Morgan takes the vigorous and indisputable position that as a result of the information made available to the contracting officer the Nab-Lord bid is so materially tainted with conflict of interest, illegality, invalidity, immorality and unconscionable conduct so as to shock the conscience of any fair minded individual and is certainly contrary to the public interest and in clear violation of the fair, open public competitive bidding laws of

the United States and its various agencies.

This position is essentially and principally arrived at in view of the association of certain individuals with the Postal Department at the time when this project originated and their continued participation in the preparation of the final design drawings approved by the Department right up to and including the exclusive bid by Rohr to the Nab-Lord joint venture.

An examination of the factual background discloses these uncontraverted facts:

1. Paul G. Hendrickson (hereinafter referred to as Hendrickson) was employed by the United States Postal Department from 1965 through most of the year 1970 and held the position of Deputy Assistant Postmaster General, Bureau of Research and Engineering.

2. During Hendrickson's employment with the Department, plans were being developed for the refurbishing and remodernization of the Morgan Station Post Office facility (hereinafter referred to as Morgan Station) located in New York, New York; the facility suffered substantial damage during 1967 as a result of a fire; and, shortly after the fire, the Department commenced the implementation of plans, specifications and designs for a new preferential mail facility for this Station.

3. In 1968, the Department engaged a joint venture of archi-

tects and engineers to work on the plans for Morgan Station and S.W. Brown Associates, consulting engineers, was to be responsible for the mechanical and electrical engineering work.

4. During Hendrickson's tenure with the Department, he was in the position of being privy to information regarding the planning and development and design mechanization relative to Morgan Station.

5. Some time during 1970, after evaluating the costs and all other relevant factors, the Department decided to postpone any further implementation of these plans until the bulk mail facility program was further refined, after which they would give further direction and attention to Morgan Station.

6. Some time during the latter part of 1970, Hendrickson resigned from the Department and operated essentially as an independent management consultant specializing in work related to the United States Post Office Department.

7. In or about June of 1971, the Department invited approximately six companies associated in one way or another with the manufacturing and installation of material handling systems to compete on Phase I for a contract for the design and engineering of the mechanization portion of Morgan Station.

8. One of the six competing companies was Jervis B. Webb

Company (hereinafter referred to as Webb Company).

9. Another competing company was Butz Engineering Company (hereinafter referred to as Butz Company) which associated itself with a consulting firm called Unidex for the purpose of assisting it in preparing the design for the proposal of the mechanization system related to Morgan Station. Unidex engaged Hendrickson to assist it in this endeavor.

10. Thereafter, Butz Company had a falling-out or disagreement with Hendrickson and then severed its relationship with Unidex.

11. Hendrickson thereafter approached Webb Company and indicated that he had information that Webb Company would not be one of the two successful bidders for Phase I of the project but that, with his help, Webb Company could become one of the two selected bidders if he were engaged by Webb Company.

12. Webb Company thereafter engaged Hendrickson and thereafter became one of the two selected bidders; the Butz Company was the other selected bidder.

13. Leo J. Anderson was employed with the Department from 1960 through 1971 and held the position of Director of Construction.

14. During Hendrickson's tenure, Ollie K. Knight and Thomas C. Cargill, were employees of the Department in an engineering capacity.

15. Sometime during 1971 they left the Postal Service.

16. Anderson, Knight and Cargill immediately became associated with Hendrickson upon their termination of service with the Department.

17. A management consulting firm was formed called Hendrickson & Anderson, which subsequently changed to Hendrickson & Anderson, Inc. (Hendrickson being the President).

18. This firm represented itself as having expertise in acting as a liason between the Department and client organizations for the purposes of helping obtain and administer postal service contracts and held itself out as "specialists in planning and design of mechanized postal handling systems."

19. On August 30, 1971, Hendrickson wrote to the Webb Company disclosing that his firm had complete coverage of everybody on the Department's evaluation team; that "they are or will be friendly" and that his firm was working with the top people "at the highest level" in the Department to determine just what letter mail and bulk mail systems the Department wanted. The letter sets forth the names of the so-called top brass in the Department who were in charge of the project and stated that he knew where the doubts of the Department were concerning the system and who would have the prime responsibility for each facet. (A

copy of this letter in our possession and is available for your inspection and review).

20. The technical and price proposals of Butz Company and Webb Company were subsequently rejected by the Department.

21. By this time, The Corp of Army Engineers (hereinafter referred to as "Corps") had been engaged by the Department to manage postal construction.

22. In or about November, 1972, Hendrickson again appeared on the scene with information that S.W. Brown Associates (hereinafter referred to as "Brown") was going to get the design for the mechanization job as architect-engineer and that he would be working with Brown.

23. In January, 1973, the Corp gave the contract for the modification of the engineering and design of Morgan Station to an architectural engineering joint venture which included among others Brown who as a consulting engineer, was assigned the design of the mechanization system by the joint venture.

24. While Hendrickson was in the Department, Brown, in association with others, was initially given the architectural-engineering contract.

25. Hendrickson now becomes associated with Brown on this same job after Hendrickson is no longer with the Department.

26. Ollie E. Knight and Thoms C. Cargill, who were formerly associated with the Department during Hendrickson's tenure, became employees of Hendrickson & Anderson and either individually or as employees of Hendrickson & Anderson, were engaged in a design capacity by Brown to perform the design work for the mechanization portion of Morgan Station. They were engaged on this project sometime around the early part of 1973, and worked continuously thereafter until final approval and acceptance by the Department of their working drawings which are dated March, 1974.

27. The drawings bear the initials on the face thereof "O.E.K." and "T.C.C.", which we are reliably informed are the initials of Ollie E. Knight and Thomas C. Cargill.

28. Hendrickson, from the time of his tenure in the Department, was never without an association, in one fashion or another, with this project either at the design level, procurement level, management consultant level, liason level or otherwise.

29. In or about April, 1973, both Hendrickson and Rohr circularized the industry in writing that Hendrickson was elected and assumed the position of President of Rohr-Plessey effective some time during the month of April, 1973.

30. In the letter announcement of Rohr, indicating, among other things, that Hendrickson had "broad executive experience

of a technical, operational and management nature in both private and governmental sectors," and that Hendrickson was formerly President of Hendrickson & Anderson, Incorporated, an organization specializing in the planning and design of mechanized and automated processing systems, including the layout and design of mechanized postal handling systems, it concluded that it was their belief that "Hendrickson's expertise will aid us (Rohr) in serving both our commercial and governmental customers in the area of bulk mail and general postal systems." (A copy of this letter is also in our possession and is available upon request.)

31. Anderson, Knight and Cargill thereafter, in one fashion or another, became employees of Rohr under Hendrickson's direction and Knight and Cargill continued to work on the design portion of the mechanization system until finalization and approval of the Department's plans and specifications relative thereto.

32. On September 17, 1974, Hendrickson, while President of Rohr-Plessey, contacted Webb Company and advised them that Rohr was going to enter into a joint venture on the Morgan Station job with Lord Electric and solicited the Webb Company to join them. Webb Company refused to become part of this joint venture.

33. At or about this time, it was an open secret in the

industry that a joint venture agreement was taking place between Nab Construction Company, Lord Electric and Rohr-Plessey. We are reliably informed that this arrangement continued up until about two weeks prior to bid date when Rohr-Plessey changed its position to that of an exclusive subcontractor to Nab-Lord, with a binding agreement that, if the joint venture of Nab-Lord was the low bidder and awarded the contract, Rohr would receive the subcontract for the mechanization.

34. Terminal Construction Corporation requested Rohr (both in writing and by telephone calls) to furnish it with a bid for the mechanization. Rohr not only refused to do so, but advised the President of Terminal that it had no intentions of doing so because it was exclusively tied up with Nab-Lord.

35. This is further supported by the fact that, shortly after the bid opening, and on November 27, 1974, Ollie E. Knight made a statement to an unimpeachable source that Rohr in truth and in fact was the sponsor of the Nab-Lord joint venture. This buttresses the position of the Protestant that, despite Rohr's lack of an out front position as a member of the joint venture, it affirmatively activated the joint venture in the first instance, brought the parties together, and administratively nurtured the same to conclusion. It was actually supposed to be a

member of the joint venture and the sponsor thereof but in form rather than substance, it subsequently saw fit to assume the position of an exclusive locked-in subcontractor, but still considered itself the sponsor.

Just what precipitated this change in format from a named member of a joint venture to an exclusive subcontractor now appears to be very obvious indeed. We know that a participant in a design contract is prohibited by federal regulations from serving as a contractor or supplier on the job in which it participated in the design. Some interesting conclusions may be drawn therefrom.

The fact that Rohr, under its modified arrangement, became an exclusive subcontractor to the joint venture, rather than a named member thereof, does not in any way vitiate or overcome the federal prohibition either in letter or in spirit, although it would appear on its surface that this subterfuge is merely an attempt to circumvent the clear intendment of very sound and practical regulations. It must be remembered that, in Rohr's capacity as an exclusive subcontractor, it stood to benefit only from a subcontract award to the exclusive recipient of its bid, the Nab-Lord joint venture, to like extent as if it were a member of the joint venture, if not more so. By its ex-

clusive arrangement, it stood to profit from its subcontract with the joint venture without assuming any risks, if any, that may be applicable to other portions of the job. The federal regulation herein referred to was clearly intended to avoid a conflict of interest contrary to public policy which can only undermine and destroy the equal footing of competitive bidders in public bids. Rohr, through Hendrickson and his group, was very substantially armed with exclusive design and engineering information not in the possession of other bidders and unavailable to the other bidders and, therefore, enjoyed a very substantial competitive advantage. This violates the very essence of the public bidding statutes, rules and regulations. Had Morgan been armed with the same inside information available only to Rohr and its exclusive joint venture affiliate, there is no doubt that Morgan's bid would have been substantially lower and conceivably might even have been lower than the bid of Nab-Lord.

In any event, we cannot overemphasize the fact that any information of any kind, character or description, which tends to give one bidder an undue advantage over another, is clearly against public policy and a substantial violation of every standard of fair play that must prevail in any competitive bid where all bidders are presumably intended to be on equal footing.

Nab-Lord, by its association with Rohr-Plessey, was in a position of having available to it very substantial material information which was not available to any other bidders and which definitely had a direct bearing on the amount of its proposal.

Because of Hendrickson's background with the Department and knowledge gained during his service there, and, more importantly, because of Messrs. Knight and Cargill's direction on the preparation of the government design drawings and specifications for the mechanization portion of this job, Rohr-Plessey was in a position of being the only bidder completely familiar with the general layout and condition of the structure itself and of having available to it substantial engineering information unavailable to other bidders relative to this job as well as being familiar with the design of the mechanization system. All of this knowledge and information definitely put them in a position of having an unfair competitive advantage over all other bidders.

Inasmuch as employees of Rohr-Plessey and/or Hendrickson were involved in the engineering of this job from its inception, they were definitely in a position of having available to them very meticulous and detailed engineering information for the total scope of this job, including each and every system of the

mechanization. Moreover, many items cannot possibly be shown on the drawings and can only be obtained by a detailed engineering study which the other bidders could not do since it would require an excessive amount of engineering work and actually involve getting into the job itself. There are a countless number of items which require detail design and which can only be determined after exhaustive and detailed engineering work is performed.

For example, the specifications state that certain conveyors must be able to carry both letter and flat trays and also be able to read and write codes on the two trays within the same conveyor system. To our knowledge, this has never before been done. However, we are reliably informed that given sufficient lead time to prepare the necessary engineering work, a proper control system could be devised. Under the time table in this bid, there was not enough time available prior to the bid date for such work to be performed.

However, Rohr-Plessey was in the position of having ample time and opportunity to determine an economical solution for this problem since its personnel were responsible for the requirements of the specifications pertaining to this function and were in a position to avail themselves of this unfair competitive advantage.

Section 5A of Division 5 of Volume I of the technical

specifications (and specifically, Subdivision 8 thereof entitled "performance Specification for Construction of Ceiling-Framing Panels for Support of Mechanization Loads and Lookout Galleries in the Second through Sixth Floors") places on the successful bidder the total responsibility for the design, fabrication and erection of the structural steel framing to support the mechanization and lookout galleries and of retaining a "licensed professional engineer" to design this work and coordinate all of the subcontract disciplines:

Subdivision 12 of Section 5A provides that the successful contractor must include, in his proposal, payment for furnishing all of the engineering, plant, labor, materials, equipment and incidentals necessary to design, fabricate and erect the specified structural steel, including the preparation of design and shop drawings.

In furtherance thereof, the following question was raised at a pre-bid conference and the following answer was given in reply thereto.

Question: The first volume of the specifications has lots of sketches indicating structural steel layouts. Is this a guideline on how to do it? Should the contract be bid based on volume of steel indicated on these sketches? (meaning the sketches referred to in the Appendix to Section 5A)

Answer: The total tonnage required is the responsibility of the bidder.

Thus, it is crystal clear that the specifications places total and complete responsibility on the successful bidder to determine the extent and the exposure it would have in furnishing the structural framing for the entire system.

In addition, according to the specifications (as well as the reply of the Department to the inquiry at the pre-bid conference), bidders were not permitted to rely upon the design drawings contained in Appendix A of Section 5A. The bidders were informed that they had the responsibility to determine the size and exact locations of required structural components and that the informational material presented in the drawings contained therein (i.e., Appendix A) was intended to serve only as a guideline and merely represents "suggestions" relative to framing and connections.

We have been informed that there is every likelihood that the design information contained in Appendix A is oversized and it is very probable that materials more economical could be substituted for those "suggested" in Appendix A. However, a bidder could not possibly know about this until the completion of detailed engineering work subsequent to any award of contract.

For example, the specifications clearly state in Subdivision 8.7.2.5 that the members appearing in Appendix A are admittedly

uneconomical. However, all bidders except Nab-Lord would have to govern themselves accordingly and reflect the same in their proposals. Nab-Lord who was through the procedure disclosed herein privy and in fact actually involved in the preparation of this requirement in the specifications would definitely be in a position of knowing whether to rely on the specification information for bidding purposes or whether the specifications were designed that way to lead other bidders astray.

Whenever one is involved in a performance type of specification (which this was), there are certain costs that must be provided for in the proposal. These "costs" could very well be eliminated and discounted by a party who is in a position of having available to it complete and exhaustive engineering and design information.

Because Rohr-Plessey and/or Hendrickson's personnel were involved directly with the mechanization design of this project, they, and any bidder associated with them, had obvious unfair competitive advantage over the other bidders in the light of the facts as outlined herein.

Let us not lose sight of the fact that they also were in a position of having available to them very detailed working drawings unavailable to all other bidders and which obviously

represented a very significant cost item to the other bidders.

It is axiomatic that persons involved with the design of this system over an extended period of time possess information of an extremely more precise nature than that called for in the specifications. A person responsible for the preparation of the government design drawings should know whether or not anyone could accept the design concept contained in the specifications at face value. Bidders not privy to this information would have to make their own independent judgment in this regard and reflect the judgment in its costs.

If all of the bidders were in a position of having this engineering information available to them, each would be in a position of knowing whether or not they could rely on the drawings and information materials contained within the specifications for bidding purposes. Not having this information available meant that the other bidders and their subcontractors had to bid this job without knowing the exact reliance they could put on the drawings and informational material contained within the bid documents and, there was no information available to them indicating whether the drawings were overdesigned. This information is highly significant and represents a decided unfair advantage available only to Nab-Lord through Rohr-Plessey.

The whole key to the competitive advantage possessed by Nab-Lord through its association with Rohr-Plessey is that they alone of all the bidders had this detailed engineering and design work available to them for a very long period of time and were in a position of actually knowing the exact condition of the structure itself. All of this knowledge and information was invaluable, to say the least, especially in connection on an alteration job such as this.

The specifications further stated that certain postal service property would be furnished to the contractor for installation. The equipment was not described or identified. The cost of this installation work could be very significant. Morgan was very anxious to determine prior to bidding exactly what type of equipment was to be furnished so that it could reflect the cost accurately in its bid. It was unable to obtain any information other than the estimated weight of such equipment. This precluded any detailed informed judgment relative to the installation hours and cost required for this type of equipment. Nab-Lord alone was not placed in this unknown area. The exact information concerning the type of equipment was available to the design group working on the engineering phase of this job and they were with Rohr-Plessey through its association with Nab-Lord through the submission of its

bid.

One of the most important factors involved in a performance type of specification such as this is the engineering analysis of the performance requirements. This obviously cannot be completed until after award of the contract. However, in this instance, since Rohr's people (and therefore the Nab-Lord alliance) were the designers and engineers of this operation, they alone had ample information and time to determine not only what would be required or necessary but also what should not be so necessary or required.

All of these factors eloquently demonstrates that there was substantial material information available to Nab-Lord and no other bidder which afforded them an unfair competitive advantage over the other bidders.

The Nab-Lord position is no less tainted with the same tar of conflict of interest and unfair and undue advantage in contravention of the public bidding regulations, than the position of Rohr itself. The parties are indisputably and indistinguishably one. Rohr, as an exclusive subcontractor, could not benefit and profit from its conflict of interest position unless the party to whom it submitted its inside design and engineering information was the low and successful bidder. Conversely, Nab-Lord could not be

the low and successful bidder unless it was engaged in an interlocking and inextricable arrangement with Rohr for the same purposes. It therefore is readily apparent that Nab-Lord and Rohr, under the existing circumstances alluded to herein were really one entity. Any contention that Rohr should be barred but that Nab-Lord could be awarded the contract for the Morgan Street Station must thus fall by its own weight because it cannot stand the light of day. Nab-Lord's hands are as unclean as Rohr's.

The next lowest responsible, responsive bidder is Morgan Associates. Although its bid is approximately 5.75% higher than the Nab-Lord bid, the award should nevertheless be made to it because as has often been said in the courts it is far better, wiser, sounder, equitable, legal and sensible to sanctify and preserve the public bidding laws of these great United States rather than to overlook and condone flagrant violations of the same and thereby open the flood gates of abuse and erosion which must inevitably follow in the natural evolution of events from such practices and under such circumstances.

It is a long established maxim in the public works construction industry which is universal in character, that he who designs

cannot build! He who designs cannot profit, directly or indirectly, by circumvention, subterfuge, or otherwise, in the product that flows from such design. Rohr-Plessey, through its President Paul Hendrickson, a former high postal official, and its other associates and employees like Leo J. Anderson, Ollie E. Knight and Thomas C. Cargill, were actively associated with the design and engineering of the Morgan Station project, from its very inception through to its conclusion. To now permit it or anyone in privy thereto to profit from such design participation would flaunt, undermine and strongly violate any standard of decency, fair play, integrity and morality. As a matter of fact, to close one's eyes to the undisputed facts of this case and attempt to award the Morgan Station contract to Nab-Lord would violate all the basic fundamentals and tenets upon which all competitive bidding is predicated. Nab-Lord, by its direct and exclusive association with Rohr, cannot escape the same characterization.

For the facts and reasons set forth herein, it is the position of Morgan Associates that the bid of Nab-Lord be rejected and no contract awarded to it. It is the further position of Morgan Associates that an award be made to it on its bid as being the lowest responsible bidder.

Respectfully submitted,
HELLER & LAIKS,
Attorney for Protestor

BY: Murray N. Laiks
Murray N. Laiks

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Western Union Mailgram



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 PH3 US POSTAL SERVICE GENERAL MANAGER FACILITIES AND BUILDING
 DEPT, DLR
 RM 8965 475 WEST LIENFANT PLAZA SW
 WASHINGTON DC 20260

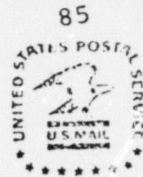
THE UNDERSIGNED MORGAN ASSOCIATES
 A JOINT VENTURE WHICH SUBMITTED A BID ON INVITATION R.E.B. 74-3
 FOR THE UNITED STATES POST OFFICE MORGAN STATION NEW YORK HEREBY
 PROTESTS THE BID SUBMITTED BY NAB-LORD ASSOCIATES.
 IT IS OUR PRESENT INFORMATION THAT PAUL HENDRICKSON PRESIDENT
 OF ROHR-PLESSEY WAS FORMERLY EMPLOYED WITH THE UNITED STATES
 POSTAL SERVICE IN A SENIOR POSITION AT THE TIME THE NATIONAL
 BULK MAIL FACILITY PROGRAM WAS IN ITS PLANNING AND DEVELOPMENTAL
 STAGE (INCLUDING THE BULK MAIL FACILITY PROGRAM AT MORGAN STATION)
 AND WAS ALLEGEDLY IN A POSITION OF BEING PRIVY TO SUBSTANTIAL
 KNOWLEDGE AND INFORMATION UNAVAILABLE TO OTHER BIDDERS. KEY
 EMPLOYEES OF HENDRICKSON AND ROHR-PLESSEY WERE EMPLOYED BY THE
 DESIGN FIRM WHICH WAS COMMISSIONED BY REPRESENTATIVES OF THE
 POSTAL SERVICE TO PERFORM AND DESIGN AND ENGINEERING WORK FOR
 THE MECHANIZATION PORTION OF THIS PROJECT. THESE INDIVIDUALS
 WERE PRIMARILY RESPONSIBLE FOR THE ENTIRE DESIGN AND ENGINEERING
 FOR THE MATERIAL HANDLING SYSTEM AT MORGAN STATION AND WERE
 PRIVY TO INFORMATION NOT AVAILABLE TO OTHER BIDDERS AND THESE
 PERSONS WERE THEN AND ARE STILL NOW KEY EMPLOYEES OF ROHR-PLESSEY
 AND OR HENDRICKSON, THESE INDIVIDUALS INITIALS APPEAR ON THE
 FINAL GOVERNMENT CONTRACT DRAWINGS RELATIVE TO THE MECHANIZATION
 PORTION OF THIS PROJECT.

IN ADDITION WE ARE INFORMED THAT ROHR-PLESSEY REFUSED TO SUBMIT
 PROPOSALS OF ANY KIND FOR THE OF FORMENTION MECHANIZATION TO
 ANY OTHER BIDDERS AND ONLY SUBMITTED A PROPOSAL TO NAB-LORD
 ASSOCIATES WITH THE UNDERSTANDING IT WOULD NOT SUBMIT ANY PRICE
 TO ANY OTHER BIDDERS AND WOULD BE ITS SUBCONTRACTOR AND OR PART
 OF A JOINT VENTURE. ANY ATTEMPT TO AWARD THIS CONTRACT TO NAB-LORD
 ASSOCIATES WOULD REWARD THE JOINT VENTURE AND ROHR-PLESSEY FOR
 ITS UNFAIR COMPETITIVE ADVANTAGE ALL OF WHICH IS APPARENTLY
 A DIRECT AND SUBSTANTIAL VIOLATION OF THE FAIR AND OPEN PUBLIC
 COMPETITIVE BIDDING LAWS TO THE DETRIMENT AND CONTRARY TO THE
 INTERESTS OF THE POSTAL SERVICE, THE OTHER BIDDERS AND THE GENERAL
 PUBLIC. MORGAN ASSOCIATES BID WOULD HAVE BEEN SUBSTANTIALLY
 LOWER HAD IT AVAILABLE THE INFORMATION AND KNOWLEDGE SOLELY
 IN THE POSSESSION OF NAB-LORD ASSOCIATES THROUGH ITS ALLIANCE
 WITH HENDRICKSON AND OR ROHR-PLESSEY.
 WE RESPECTFULLY REQUEST A HEARING ON THIS PROTEST BEFORE ANY
 FURTHER ACTION IS TAKEN BY YOUR DEPARTMENT AND PRIOR TO ANY
 AWARD OF A CONTRACT FOR THIS PROJECT.

MORGAN ASSOCIATES P O BOX 175 WOODRIDGE NJ 07075

16121 EST

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LAW DEPARTMENT
Washington, DC 20260

Protest of

MORGAN ASSOCIATES

IFB No. REB 74-8

) Date: JAN 3 1975

) P.S. Protest No. 74-53

DECISION

Morgan Associates, a joint venture, has protested against the possible award of a contract for construction at Morgan Station Postal Facility in New York City to the apparent low bidder -- Nab-Lord Associates, also a joint venture. Bids were opened on November 21, 1974, and the protest was received by the Contracting Officer on December 2, 1974. Protestant claims that the information upon which it bases its protest did not become available to it until November 27, 1974. We see no reason to dispute that claim; and, therefore, the protest is considered to be timely within the meaning of Postal Contracting Manual, Section 2-407.8(b).

Protestant alleges that Mr. Paul Hendrickson was formerly employed by the Postal Service and was, therefore, in a position of being privy to substantial knowledge and information unavailable to other bidders. It is alleged that Hendrickson, now president of Rohr-Plessey, and other former Postal Service employees were associated with S. W. Brown Associates, the contractor who made the mechanization design drawings for the Morgan Station project, and that Rohr-Plessey will be the subcontractor to Nab-Lord for the mechanization construction so that Nab-Lord was privy to knowledge unavailable to other bidders in violation of principles of open and competitive bidding. Furthermore, it is alleged that Rohr-Plessey refused to submit proposals for mechanization to any other bidder but, instead, agreed to be a subcontractor for Nab-Lord only. Protestant requests that the bid of Nab-Lord be rejected and the award be made to Morgan Associates as the next lowest bidder.

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The fact that Rohr-Plessey may have agreed to be a subcontractor for only one of the bidders is of no concern here to the Postal Service. The solicitation did not require that subcontractors be listed, and the General Provisions specifically recognize in paragraph 17 that there is to be no privity of contract between the Postal Service and any subcontractors. Nor is there any provision for approval of subcontractors by the Postal Service. The agreement of a subcontractor to give a proposal to a particular bidder must be considered within the realm of private business practices which are beyond the control of the Postal Service in this case.

As to the allegation that Mr. Paul Hendrickson's employment by the Postal Service put Nab-Lord in a position of having knowledge unavailable to other bidders, it is noted that Hendrickson held the position of Director of Operations, Department of Research and Engineering (now the Planning and New Development Department) from approximately May 2, 1966, until his departure from the Postal Service on July 31, 1970. The allegation that Mr. Hendrickson may have used information obtained during his employment in order to give Nab-Lord an unfair advantage in the competitive bidding process cannot be sustained since the design specifications and layout drawings were not developed until almost two years after Hendrickson left the Postal Service.

Protestant also states that since employees of Rohr-Plessey worked for the firm which designed the mechanization, the Postal Service would be violating its own policy which is to avoid the awarding of contracts for construction to the firm which designed the project. (Interim Regulations for the Procurement of Construction, No. 74-2, Sec. 18-511). However, that regulation merely states that: "No contract for construction of a project shall be awarded to a firm or person that designed the project..." No mention is made of employees who may have worked on the design for the Architect-Engineer or of subcontractors. The firm of Rohr-Plessey is not one of the bidders here, and no contract will, therefore, be made with it.

Also, since there will be no privity of contract between the Postal Service and any prospective subcontractor, we conclude that there has been no violation of Postal Service policy.

We concur with the Contracting Officer's conclusion that the bid of Nab-Lord is responsive and that the award cannot be made to protestant.

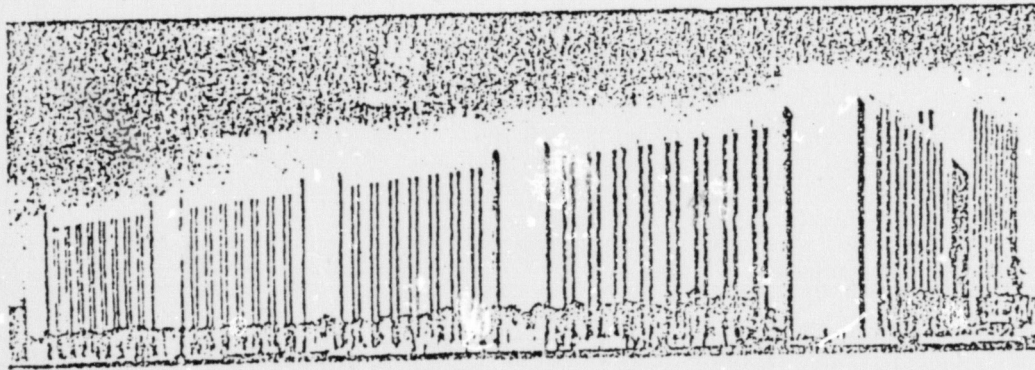
The protest is denied.

James J. Wilson
James J. Wilson
Assistant General Counsel
Contracts and Property Division

New York Construction News

Monday, July 15, 1968

General Contract To Be Let in April For \$100 Million Post Office Building



A buff brick exterior will be used on the \$100 million postal facility to be built in Manhattan from plans by a joint architectural and engineering venture of Edward Durell Stone and Associates, principal architects; Frederic R. Harris Inc., engineers; and

Ames Associates, associated architects-engineers. S. W. Brown, consulting engineers, are the mechanical and electrical engineers for the building. Construction contracts will be awarded next April for the facility, with construction work to begin in June.

A joint venture of architects and engineers are currently at work on preliminary plans for a \$100 million postal building, said to be the largest in world history, which will cover a two-block area in Manhattan bounded by Ninth and Tenth Avenues and by 28th to 30th Streets. Target for completion of the project is sometime in 1974. The architectural engineering joint venture consists of Edward Durell Stone and Associates, principal architects; Frederic R. Harris Inc., engineers; and Ames Associates, associated architects-engineers. Harris will handle the structural engineering details. Mechanical and electrical engineering work will be done by S.W. Brown consulting engineers.

S. W. BROWN & ASSOCIATES

HENRICKSON & ANDERSON

MANAGEMENT CONSULTANTS
WESTGATE RESEARCH PARK
SUITE 210
1651 OLD MEADOW ROAD
MCLEAN, VIRGINIA 22101

703 - 893-1235

August 30, 1971

Mr. J. S. Seigh
Conveyer Systems
Jervis B. Webb Company
9000 Alpine Avenue
Detroit, Michigan 48204

Dear Bill:

From a strategic standpoint, the following should be kept in mind on a rather constant basis.

The Butz Corporation is totally committed to this one job. Clarence Butz, President, will know this system thoroughly and will make the presentation. He does have the assistance of Mr. Monsour who developed this system originally and is dedicated to this system. This could be to our advantage, since Mr. Monsour most likely will be inflexible. However, no one knows this system better than Monsour.

The Butz Corporation has a three to five week start on Jervis B. Webb. They are gambling at least \$100,000 of company money to assure that they win this contract. As an example, they have had from ten to fifteen men working on this program for approximately five weeks. These people thoroughly knew parts of this system when they started.

In short, we are up against a rather formidable team, a team that knows they must win this contract. The Butz team is desperate. The majority of this team will be out of work if they do not win. Clarence Butz will be discredited in his own company.

The Jervis B. Webb Company has the following advantages:

1. The company knows the system well through Mr. Anderson and Mr. Knight. As an indication of this capability, we were able through the Jervis B. Webb project engineer to develop a technical proposal in a very short period of time, that was equal to or superior to the Butz proposal.

Mr. J. S. Seigh

2. We are not committed to this system.
3. We are familiar with the weak points in the system and we are ready to find alternatives, whereas, the Butz people are probably committed to the present system.
4. We know what top management in the Postal Service wants and where their doubts are concerning this system. The Butz people are not aware of this. We will be able to probe this on a constant basis. Butz does not have this ability.

The evaluation team will be made up of the following people:

Harold Faught, Senior Assistant Post Master General,
Pat Hanes, Director of Letter Mail,
George Bailey and Gary Herring, who both work for Mr. Hanes,
John Warneke, Director of Mail Processing,
Mr. Rockwell, Director of Machine Design,
Ken Balme, Branch Chief who will have prime responsibility for the final system,
Mr. Partke, Project Engineer who works for Mr. Balme,
Fred Batrus, Assistant Post Master General.

In the contracts area prime responsibility will be with Mr. Cox who is Acting Head of Procurement (he will probably be gone before this program is evaluated), Conrad Trahern, Head of Procurement, Bob Ely, Head of Letter and Bulk Mail Procurement, Gene Siggins, Head of Letter Mail Procurement, and Mort Lachowitz, Contracting Officer.

We feel that we have complete coverage of everybody on this team and that they are or will be friendly to Jervis B. Webb. We are working with these people at the highest level to determine just what letter mail and bulk mail system they want. The Butz team does not have this capability. They can work with the very lowest level, but in our opinion, the lower level people in the Post Office are committed to the proposed system.

Mr. J. S. Seigh

The Jervis B. Webb Company has a much superior reputation than the Butz Company. It has much greater experience to show and draw upon.

Butz has hired a large group of technicians (other than Monsour) that he believes are better than they really are. Our technical team should be much superior. Butz also believes he has a firm (Nelson Associates) that can do his economic analysis. They admitted to me that they wanted me to do their actual analysis for them. They have contacted Ollie Knight to do this work for them. With Ollie Knight and Tom Corgill we will have the most knowledgeable analysis team in the country.

Sincerely yours,

HENDRICKSON AND ANDERSON

Paul G. Hendrickson

PCH/cas

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT

MORGAN ASSOCIATES, a Joint Venture of
TERMINAL CONSTRUCTION CORPORATION
THE DIG CONCRETE CORPORATION
UNDERHILL CONSTRUCTION CORP., and
NAGER ELECTRIC COMPANY, INC.,

Plaintiff

v.

UNITED STATES POSTAL SERVICE
ELMER T. KLASSEN, POSTMASTER GENERAL, and
JAMES J. WILSON, Assistant General Counsel,
UNITED STATES POSTAL SERVICE
CONTRACTS AND PROPERTY DIVISION

Defendants

Civil Action File
No. 75 Civ. 117

AFFIDAVIT

EDWARD M. TAMULEVICH, being first duly sworn according to law,
deposes and says:

1. I am presently, employed by the United States Postal Service, Washington, D.C. and am the Contracting Officer for any contract awarded under Invitation No. R.E.B. 74-8 for construction of a Postal Facility at Morgan Station, New York.

2. As Contracting Officer, I am responsible for the award and administration of any contract awarded under Invitation No. R.E.B. 74-8.

3. Since insufficient funds are available, no contract will be awarded under Invitation No. R.E.B. 74-8 until February 4, 1975.

When additional funds can be approved by the United States Postal Service Board of Governors at a meeting to be held on February 4, 1975.

4. Under Invitation No. R.E.B. 74-8, bids must be accepted by January 21, 1975. However, all bidders have extended this period for acceptance until February 20, 1975. After that date, bidders are no longer bound by their offers. Since costs for construction are escalating, bidders might not be willing to extend their bids. The low bidder's price is \$2,964,000 lower than the plaintiff's price. If the low bidder fails to extend its bid or raises its price, the Postal Service will be irreparably harmed.

5. There exists an urgent operational need for the facility at Morgan Station. Any delay in the award of this contract will delay the completion of the project, thereby delaying a needed postal service to the public.

Further affiant sayeth not.

Edward N. Tamulevich

JOSEPH W. VENEZIANI
Notary Public, District of Columbia
My Commission Expires December 14, 1978

ONE (1) ~~Service of three~~ copies of the ~~Record on Appeal~~
is admitted this 31st day of January 1975

McDonagh, Schuck, Marcus, Cohen & Teller
INTERVENOR-APPELLANT

DEFENDANT'S APPEAL